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APPENDIX

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JOHN F. DAVIS, CLE

# Supreme Court of the United States

OCTOBER TERM, 1965

No. 131

EDGERTON P. DARNESTOWN, JR., CHAIRMAN OF THE MARYLAND STATE BOARD OF PUBLIC WELFARE, ET AL.,

Appellants,

—v.—

LUCILLE WILLIAMS, ET AL.,

Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND

FILED MAY 15, 1965

PROBABLE JURISDICTION NOTED OCTOBER 11, 1965

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# DOCKET ENTRIES

*United States District Court for the District of Maryland*

1968

Feb. 28—Complaint, request for a Three-Judge Court and Exhibits A, and B-1 through B-8, inclusive, filed.

Feb. 28—(Issuance of process withheld — see letter on file).

Feb. 28—Points and Authorities in support of Application for a Three-Judge Court, filed.

Feb. 28—Motion of Plaintiff, Linda Williams, and her minor children, Affidavit and Order (Thomsen, C. J.) granting leave to file in forma pauperis, filed.

Feb. 28—Motion of Plaintiffs, Junius Gary and Jeanette Gary, and their minor children, Affidavit and Order (Thomsen, C. J.) granting leave to file in forma pauperis, filed.

Feb. 28—Motion of Plaintiff, Linda Williams and her minor children, for temporary restraining order and preliminary injunction and Affidavit in support thereof, filed.

Feb. 28—Motion of Plaintiffs, Junius Gary and Jeanette Gary, and their minor children, for temporary restraining order and preliminary injunction and affidavits (2) in support thereof, filed.

March 1—Request of Plaintiff to issue summons as to Defendant, Esther Lazarus, filed.

March 1—Summons issued as to Defendant, Esther Lazarus. (Summoned — 4 March 1968).

March 1—Notification and Request of the Court (Thomsen, C. J.) for designation for Three Judge Court, filed.

March 18—Designation of Haynsworth, C. J., Fourth Cir., of Three-Judge District Court, designating Winter, Cir., J., and Thomsen and Harvey, JJ., filed.

March 21—Answer of Defendant, Esther Lazarus, Director of Public Works, etc., filed.

March 21—Motion of Defendants, Edmund P. Dandridge, Jr., Chairman of the State Board of Public Welfare; Raleigh C. Hobson, Director of the State Department of Public Welfare; and Mrs. Barbara Stevenson, Howard W. Murphy, Julius O. Shuger, Dr. W. Richard Ferguson, Lester S. Levy, Nicholas C. Mueller, Calhoun Bond and Mrs. Charles D. Harris, members of the State Board of Public Welfare, to Dismiss, and Memorandum in Support thereof, filed.

March 21—Answer of Defendants, Edmund P. Dandridge, Jr., Chairman of the State Board of Public Welfare; Raleigh C. Hobson, Director of the State Department of Public Welfare; and Mrs. Barbara Stevenson, Howard W. Murphy, Julius O. Shuger, Dr. W. Richard Ferguson, Lester S. Levy, Nicholas C. Mueller, Calhoun Bond and Mrs. Charles B. Harris, members of the State Board of Public Welfare, filed.

March 25—Amended Answer of Defendant, Esther Lazarus, Director of Public Works, etc., filed.

April 1—Memorandum of Plaintiffs in opposition to Defendants' Motion to Dismiss, filed.

June 7—Memorandum of Plaintiffs in support of Motion for Temporary Restraining Order and Preliminary Injunction, filed.

June 21—Amended Motion of Defendants to Dismiss, and Memorandum in support thereof, filed.

June 24—Hearing on Motion of Defendants to dismiss and to abstain, before the Court, Winter, Circuit J., Thomsen, C. J. and Harvey, J.

June 24—Argued and held sub-curia.

June 25—Stipulation of counsel re Statement of Facts, filed.

June 25—Oral opinion of the Court rendered.

June 26—Order (Winter, Cir. J., Thomsen, C. J., and Harvey, J.) denying Amended motion to dismiss, filed.

July 16—Supplementary Memorandum, Attachment and Amended Affidavits (3) in support of Plaintiffs' Motion for a Temporary Restraining Order and Preliminary Injunction, filed.

Aug. 6—Appearance of Sheldon London, Esquire, as co-counsel for Defendant Esther Lazarus, Director of Public Welfare for the City of Baltimore, filed.

Aug. 6—Reply Memorandum of Defendants, State Board of Public Welfare and Raleigh C. Hobson, State Department of Public Welfare, filed.

Sept. 11—Transcript of Proceedings before the Court (Winter, Circuit, J., Thomsen, C. J., and Harvey, J.) on June 25, 1968, filed.

Dec. 13—Opinion (Winter, Cir. J., Thomsen, C. J., and Harvey, J.), filed.

Dec. 23—Motion of Defendants to amend Findings of Fact and Judgment, or in the alternative to take additional testimony, or for a New Trial, or in the alternative to alter or amend the Judgment, filed.

1969

Jan. 2—Answer of Plaintiffs to Defendants' motion to amend findings of fact and Judgment, etc., filed.

Jan. 3—Hearing on Motion of Defendants to amend Findings of Fact and Judgment, or in the alternative to take additional testimony, or for a New Trial, or in the alternative to alter or amend the Judgment, and Answer of Plaintiffs, thereto, before (Winter, Cir. J.) (Thomsen, C. J.) and (Harvey, J.).

Jan. 3—Argued-held sub-curia. Briefs to be submitted.

Jan. 10—Memorandum of Plaintiffs in opposition to Defendants' Motion to amend Findings of Fact and Judgment, etc., and Exhibits A through G, filed.

Jan. 13—Stipulation of Counsel, re: Facts, and attachments, filed.

Jan. 20—Motion of Sheldon London to strike his appearance and to enter the appearance of J. Warren Eberhardt, Esquire, as attorney for Mayor and City Council of Baltimore; and Order (Thomsen, C. J.) granting leave as prayed, filed.

Jan. 24—Reply Memorandum of Defendants in support of motion for Re-Argument, etc. and attachments, filed.

Jan. 27—Motion of Defendants to Amend Findings of Fact and Judgment or in the Alternative to take additional testimony, or for a New Trial, or in the Alternative to alter or Amend the Judgment, and Exhibits A, B, C, D, E, F, G, H, I, J, and K, attached thereto, filed. (Filed separately).

Feb. 6—Supplemental Memorandum of Defendants in Support of Motion for Reargument, and Attachments, filed.

Feb. 25—Opinion and Order of Court (Winter, Circuit Court Judge), (Thomsen, Chief Judge United States District Court) and (Harvey, Judge U. S. District Court) granting in part and denying in part the Defendants motion to amend findings of facts and judgment, grant a new trial. Or receive additional evidence and alter or amend judgment, filed.

March 5—Memorandum of Defendants in Support of Proposed Order and Proposed Order attached, filed.

March 11—Memorandum of Plaintiffs in opposition to Defendants proposed order, filed.

March 14—Appearance of J. Michael McWilliams, Esq. co-counsel for defendants (except Esther Lazarus), Order of attorney, filed.

March 18—Order of Court (Winter, Circuit J., Thomsen, C. J. and Harvey, J.) permanently enjoining the Defendants as set forth etc., filed.

March 21—Notice of Appeal of Defendants, to the Supreme Court of the United States, filed. (copies mailed by counsel.)

April 3—Motion of Plaintiff Linda Williams to amend title of action to include additional members of the Maryland State Board of Social Services (formerly Maryland State Board of Public Welfare) as named parties defendant herein: Julian P. King, Lester S. Levy and Howard H. Murphy and to correct all further entries in the case to conform to said amendment, etc. and Order (Winter, J.) Circuit Court, Judge granting leave as prayed, filed.

May 15—Tanscript of Proceedings before the Court (Winter, Cir. J., Thomsen, C. J. and Harvey, J.) on June 24, 1968, June 25, 1968 and January 3, 1969, filed. (filed separately).

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*United States District Court for the District of Maryland*

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*Civil Action No. 19250*

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*Linda Williams, et al.,*

*Plaintiffs,*

*v.*

*Edmund P. Dandridge, Jr., Chairman of the Maryland State Board of Public Welfare, et al.,*

*Defendants.*

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## COMPLAINT

The jurisdiction of this Court is invoked pursuant to Title 28 U.S.C. §§2281, 2284, and 1343(3). This is a suit for injunctive relief authorized by Title 42 U.S.C. §1983 to be commenced by any citizen of the United States or

other person within the jurisdiction thereof to redress the deprivation under color of any state law, statute, ordinance, regulation, custom or usage, of those rights, privileges and immunities secured by the Constitution of the United States. The rights, privileges and immunities sought herein to be redressed are those secured by the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States and the Federal Social Security Act, 42 U.S.C. §§601-609. This is also a suit for a declaratory judgment, pursuant to Title 28 U.S.C. §2201 of rights established by the aforementioned constitutional and statutory provisions.

This is a proper case for determination by a three-judge district court under 28 U.S.C. §2281, since it seeks an injunction to restrain the enforcement, operation and execution of the regulation set forth in the Maryland Manual of the Department of Public Welfare, Part II, Rule 200, Section VII,1. commonly referred to as the "maximum grant" regulation (a copy of which is attached hereto as Exhibit A) by restraining certain officials of the State of Maryland from the enforcement and execution of such state-wide administrative regulation on the ground of its unconstitutionality under the Constitution of the United States and on the ground of its conflict with the aforesaid federal statutes.

II.

This is a proceeding for an injunction enjoining the defendants from continuing to enforce or otherwise apply its "maximum grant" regulation. This is also a proceeding for a declaratory judgment that defendants' "maximum grant" regulation:

(A) Contravenes the equal protection and due process clauses of the Fourteenth Amendment to the Constitution of the United States; and

(B) Is contrary to the purposes of the federal and state Aid to Families with Dependent Children program as expressed by the Federal Social Security Act (42 U.S.C. §601 et seq.) and the statutes of the State of Maryland. (Article 88A, §§44A, and 49, Ann. Code of Md., 1957 ed.).

III.

This is a class action authorized by Rule 23 (b) (2) of the Federal Rules of Civil Procedure. The class which plaintiffs represent are all persons similarly situated who are needy parents of dependent children and their needy dependent children eligible for Aid to Families with Dependent Children (hereinafter referred to as AFDC) and who are or may be subjected to the onerous limitations of the "maximum grant". This class is so numerous as to make joinder of all members impracticable; there are questions of law or fact common to the class; the claims of the plaintiffs are typical of the claims or defenses of the class, and the plaintiffs will protect and represent the interests of the class. The defendants in their administration of the "maximum grant" have acted in a way generally applicable to the class plaintiffs represent.

IV.

The named plaintiffs in this case are:

A. Mrs. Linda Williams, a Negro adult, 33 years of age, and a citizen of the United States and Maryland, residing in the City of Baltimore, who is entitled to receive AFDC from the State of Maryland. She is the sole support of her eight children:

| *Name* | *Age* | *Date of Birth* |
|---|---|---|
| Dorothy | 16 | November 1, 1951 |
| Linda Gayle | 14 | October 11, 1953 |
| Mildred | 11 | May 6, 1956 |
| James | 10 | June 1, 1957 |
| Anthony | 9 | October 18, 1958 |
| Ronnie | 7 | October 9, 1960 |
| Angela | 5 | October 29, 1962 |
| Wanda | 4 | June 4, 1963 |

All of these children, live permanently with Mrs. Williams in a place of residence maintained by her as their

home. The father is continuously absent from plaintiff's home. Plaintiff's health is very poor, and she is presently suffering from a serious breast condition that has already required five surgical procedures. In addition, one of her children, Ronnie, has required hospital care and attention and continuing medical supervision, for convulsions from which he has suffered since his early childhood.

B. Junius Gary and Jeanette Gary, his wife, are Negro adults and citizens of the United States and Maryland, residing in the City of Baltimore, who are entitled to receive AFDC from the State of Maryland. Mr. Gary is the sole support of his eight children:

| *Name* | *Age* | *Date of Birth* |
|---|---|---|
| Junius | 11 | February 20, 1957 |
| Catherine | 10 | January 8, 1958 |
| Anthony | 9 | November 4, 1958 |
| James | 8 | September 21, 1959 |
| Lynn Dora | 7 | November 29, 1960 |
| Pamela | 6 | November 18, 1961 |
| Mark | 5 | November 23, 1962 |
| Thelma | 4 | November 14, 1963 |

All of the children of Mr. and Mrs. Gary live with them in their place of residence maintained as their home. Mr. Gary suffers from a severe neurological condition, which causes him to have seizures, lose consciousness, and is completely disabled from working. Mrs. Gary is required at home to care for her children, and is also in ill health, being treated at a hospital clinic for hypertension and painful conditions of her arms and legs. The only source of income for Mr. and Mrs. Gary and their children, is the maximum grant of $250 per month which they receive from AFDC.

V.

The named defendants are: Mr. Edmund P. Dandridge, Jr., Chairman of the Maryland State Board of Public Welfare; Mr. Raleigh O. Hobson, Director, State Department of Public Welfare; Mr. Calhoun Bond, Mrs. Ralph O.

Dulany, Dr. W. Richard Ferguson, Mrs. Charles D. Harris, Mrs. Julian P. King, Mr. Lester S. Levy, Mr. Howard H. Murphy and Mr. J. O. Shuger, members of the Maryland State Board of Public Welfare, and Esther Lazarus, Director of Public Welfare for the City of Baltimore.

VI.

At all times hereinafter mentioned, the State of Maryland in order to receive federal funds for the AFDC programs, was required by the provisions of 42 U.S.C. §§601-609 to have formulated and submitted to the Secretary of the United States Department of Health, Education and Welfare for his approval a "state plan" for AFDC consistent with the Constitution of the United States and the provisions of the Federal Social Security Act (42 U.S.C. §§601 et seq.).

VII.

Part II, Rule 200, Section VII 1. of the Maryland Manual of the Department of Public Welfare provides that "(T)he amount of the grant is the resulting amount of need when resources are deducted from requirements as set forth in this Rule, subject to a maximum on each grant from each category:" The maximum grant permitted under AFDC in Baltimore City is $250 per month regardless of the size of the family unit and its actual need. Public assistance standards applicable to the City of Baltimore have been formulated (these schedules are attached hereto as Exhibit B). These schedules provide, *inter alia*, a standard for determining the cost of subsistence needs, shelter, insurance premiums, school supplies, laundry and clothing. The Department of Public Welfare uses these standards in determining the amount of an AFDC grant.

VIII.

Defendants acting under color of authority vested in them by the laws of the State of Maryland in the enforcement, operation and execution of the maximum grant regulation have pursued and are presently pursuing poli-

cies and practices which violate the constitutional rights of plaintiffs and the class they represent and which are contrary to the expressed policy of the Federal Social Security Act as follows:

A. Under the maximum grant regulation a family no matter what its size may receive no more than $250 per month in AFDC benefits. Thus the maximum grant regulation prevents the satisfaction of the needs of all children in a family of seven persons or more, as plaintiffs herein. For example, according to the standards of subsistence (food, clothing, and household supplies) and shelter formulated by the Maryland Department of Public Welfare a family of seven persons should receive $254. per month and a family of eight should receive $280. per month. This does not include the cost of insurance premiums, school supplies, and laundry since the amount would vary with the age of the children; the amount of need would be greater if these items were included. This disparity between the amount that should be received according to the standards of subsistence and shelter and the amount actually received because of the limitation of the maximum grant increases with the size of the family. Children in smaller families of six persons or less are not so affected by the maximum grant *e.g.*, the family of six persons may receive the full amount determined by the Department of Public Welfare to be necessary to satisfy their subsistence and shelter needs since this amount ($229) is less than $250. Plaintiffs and their children and the class they represent are denied rights guaranteed by the equal protection clause of the Fourteenth Amendment since the maximum grant regulation has the effect of treating needy children differently based on an arbitrary standard not related to the purpose of AFDC — the size of their family.

B. The express policy of the Federal Social Security Act (42 U.S.C. §§601 et seq.) is to "strengthen family life." This maximum grant regulation fails to effectuate this policy and indeed it encourages the disruption of families, since (as will hereafter be demonstrated) the needs of a child in a large family can best be satisfied if the child were to leave the family and live with a relative.

C. The maximum grant regulation complained of herein contravenes Maryland's expressed purpose of AFDC, which is to strengthen family life (Article 88A, §44A, Ann. Code of Md., 1957 ed.) since it encourages the disruption of families. Its limitation makes the amount of assistance insufficient to provide each child receiving AFDC with a reasonable subsistence compatible with decency and health as required by Article 88A, §49 of the Annotated Code of Maryland.

IX.

Under the maximum grant provision, plaintiffs are denied an amount of assistance commensurate with the standards of need established by the Maryland Department of Public Welfare. (The schedules are attached hereto as Exhibit B).

A. Mrs. Linda Williams, according to the standards of need formulated by the Department of Public Welfare, including the cost of insurance premiums, school supplies and laundry, should receive $296.15 per month for herself and her eight children, $46.15 more than the maximum grant of $250 per month which she actually receives.

B. Mr. Junius Gary and his wife, Jeanette, according to the same standards formulated by the Department of Public Welfare, including the cost of insurance premiums, school supplies and laundry, should receive $331.50 per month for themselves and their eight children, $81.50 per month more than the maximum grant of $250 per month, which they actually receive.

Two hundred fifty dollars ($250.00) per month is insufficient to provide plaintiffs with a reasonable subsistance compatible with decency and health and is inadequate to meet their minimum financial needs. After the payment of their rent each month, the Garys have a mere $175 per month to meet all of their needs for food and clothing and heating of their home and this amount is grossly inadequate, often leaving Plaintiffs with no money to purchase food, and putting their children to considerable embarassment and disadvantage in school activity because of their

cast-off clothing and the other effects of poverty, which sometimes causes them to miss school. The family has no money, automobile, or other property of any kind save a few items of old furniture and the inadequate clothing they have been able to purchase. They are in serious debt, particularly in regard to public utilities companies, which has caused their gas and electricity to be shut off on numerous occasions for failure to pay current charges, Their home is heated by gas space heaters, and the cut off of their utilities often leaves them with no heat in their home.

X.

The maximum grant regulation denies to plaintiffs and members of their class equal protection of laws in violation of the Constitution since they are given smaller assistance grants per person than are other recipients under the AFDC program on a basis wholly unrelated to the purpose of the program. The amount a needy child receives varies with the size of its family, so that children in smaller families are in the preferred position of receiving much more per child than children in larger families receiving AFDC.

Unhampered by the maximum grant, in a family of four (one parent and three children), on the basis of subsistence and shelter standards (since the cost of insurance and school supplies varies with the age of the child) the parent and each child receives assistance at the rate of $44.50 per month; in a family of five persons (one parent and four children), $41.50 for the parent and each child; and in a family of six persons (one parent and five children), $38.50 for the parent and each child. Since Mrs. Williams' children are in the position of being members of a large family, each person receives assistance at the rate of $27.78 for the parent and each child, although according to Maryland's standards of subsistence and shelter they should receive assistance at the rate of $32.16 per person. Each person in Mr. Junius' family receives assistance at the rate of $25.00 per person although according to Maryland's standards of subsistence and shelter they should receive assistance at the rate of $33.15 person. (The parents in each family receive the identical amount as each child.)

## XI.

The maximum grant regulation encourages the disruption and separation of families in the following ways:

A. Mrs. Williams receives $250.00 per month in AFDC payments. Divided by the number of persons in the assistance unit, this amounts to $27.78 per person. If, however, she were to place two of her children of 12 years of age or over with relatives, each child so placed would be eligible to receive $79.00 each as an assistance unit, in accordance with schedule AA, attached hereto; with two of her children out of her family, she would still be eligible to receive the maximum grant of $250.00; however, each of the remaining children would receive aid at the rate of $35.71 per child. Thus, she and her eight children would then be receiving over-all benefits of $408.00; $158.00 above the maximum grant, constituting an anomolous situation of benefits accruing as a result of the break-up of the family.

B. Mr. and Mrs. Gary receive $250.00 per month in AFDC payments. Divided by the number of persons in the assistance unit this amounts to $25 per person, per month. If, however, they were to place two of their children between the ages of six and twelve with relatives or strangers, each child so placed would be eligible to receive $65 each as an assistance unit, in accordance with schedule AA, attached hereto; with two of their children out of their family, they would still be eligible to receive the maximum grant of $250; however, each of the remaining members of the assistance unit would receive aid at the rate of $31.25 per person. Thus, Mr. and Mrs. Gary and their eight children would then be receiving over-all benefits of $380, $130 above the maximum grant, constituting an anomolous situation of benefits accruing as a result of the break-up of the family.

Because of the operation of the maximum grant regulation, families are rewarded if they break up their families and place their children outside the home with relatives or others, since the amount received per child is increased and the maximum grant may be circumvented. Plaintiffs

and the class they represent have the option of keeping their families together, the goal expressed by the Federal Social Security Act, or placing their children with relatives or strangers in order that their needs be satisfied. Failure by the Maryland Board of Public Welfare to accommodate the actual needs of children of necessity, results in the disruption of family solidarity.

XII.

Under the Maryland AFDC status and the "maximum grant" provisions complained of, enforced, applied and implemented by defendants, plaintiffs are denied a minimal standard of living commensurate with the minimum standard of need established by the State of Maryland Department of Public Welfare for a family of eight children, as prescribed in the standards established by the Department of Public Welfare, which sets said minimum for Linda Williams and her family at $296.15 per month for herself and her eight children, and at $331.50 per month for Junius Gary and his wife and eight children, as more particularly described in the schedules attached hereto as Exhibit B.

The "maximum grant" provisions herein complained of as enforced, applied and implemented by the defendants, their predecessors in office, agents and employees, bear no reasonable relation to and contravene the purpose and intent of the Federal Social Security Act, Title 42, United States Code, Section 601, which is to furnish assistance to needy dependent children, to maintain and strengthen family life, and to help the parents of such children to attain personal independence and self-support, in that said provisions:

(a) result in a discriminatory lack of uniformity in the amount of assistance available to individual children and parents with similar needs;

(b) penalize children and parents in large families and encourage the break-up of such families into small units;

(c) deny large families a standard of living commensurate with the minimum standard of assistance and standard of need as promulgated by the Maryland State Welfare Department as determined by its own economic calculations.

(d) deny plaintiffs and other large families receiving public assistance even sufficient assistance as will meet minimum nutritional standards and thereby gradually effect a program of starvation.

The "maximum grant" herein complained of, enforced, applied, and implemented by defendants, their predecessors in office, agents and employees, violates and is repugnant to the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution in that by imposing an arbitrary restriction on the amount of assistance available to any family regardless of the individual needs of particular children or parents said provisions discriminate against plaintiffs and all others similarly situated, because of the size of their families, in a manner which bears no substantial, reasonable, or fair relation to the purposes and intent of the federal and state AFDC legislation under which said provisions operate, and thereby create arbitrary, irrational, and discriminatory classifications which deprive plaintiffs and members of their class of equal protection of the laws.

Defendants' enforcement, application, and implementation as to plaintiffs of the "maximum grant" provisions herein complained of has caused plaintiffs extreme hardship, suffering, and anxiety, including inadequate food, clothing, and shelter, and will continue to suffer severe and irreparable injury to their health and well-being, and to their family life, as a result of the enforcement, application, and implementation of the "maximum grant" provisions until said provisions are declared unlawful and unconstitutional and their enforcement enjoined by this Court.

## XIII.

Finally, the enforcement, application and implementation of the "maximum grant" provisions by the defendants,

has violated and continues to violate the due process clause of the Fourteenth Amendment to the United States Constitution, as applied to the plaintiffs, in that it violates the due process guarantee of marital privacy. All of the children of the plaintiffs, Junius Gary and Jeanette Gary, his wife, and the plaintiff, Linda Williams, were born before application was made for welfare benefits, and no additional children have been born to the plaintiffs since they began receiving an AFDC grant from the defendants; nevertheless, the amount of their grant is less than the adequate assistance for minimal food and shelter needs as computed by the defendants, even though the plaintiffs freely choose a large family before receiving AFDC assistance. Thus the "maximum grant" provision intrudes on the right of marital privacy of the plaintiffs both before and during the period of AFDC assistance by imposing an unconstitutional burden on the exercise of a constitutional right by the plaintiffs, by denying an amount of assistance equal to the actual needs of the families of the plaintiffs.

XIV.

No adequate administrative remedy, or adequate remedy at law, is available.

Wherefore, plaintiffs respectfully request the Court, on behalf of themselves and others similarly situated, to:

1. Convene a three-judge district court to determine this controversy pursuant to Title 28 U.S.C. §§2281 and 2284;

2. Enter a preliminary and permanent injunction:

(a) prohibiting, restraining and enjoining defendants, their successors in office, and all of their agents from enforcing, applying or implementing said maximum grant regulations;

(b) prohibiting payments of assistance which are less than the minimum subsistence and shelter needs as established by the Maryland Board of Public Welfare, and

ordering and requiring defendants to make welfare payments to plaintiffs and members of the class they represent in accordance with minimum subsistence and shelter needs as established by the Maryland State Board of Public Welfare; and

(c) ordering and requiring defendants, their successors in office, all of their agents, to furnish AFDC assistance to Plaintiffs and all others similarly situated without regard to said maximum grant regulations:

3. Enter a declaratory judgment pursuant to Title 28 U.S.C. §2201, declaring that said maximum grant regulations:

(a) contravenes the purpose and intent of the AFDC Program as explained in the Federal Social Security Act (42 U.S.C. §§601 et seq.), and the Maryland Public Legislation (Article 88A, §§44A and 49); and

(b) contravenes the equal protection and due process clauses of the Fourteenth Amendment to the Constitution of the United States, and for such further or alternative relief as this Court may find to be just and equitable.

(Signatures of counsel and certificate of service.)

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EXHIBIT A

Public Assistance Rule 200

VII — Amount of Grant and Payment

1. *Amount* — The amount of the grant is the resulting amount of need when resources are deducted from requirements as set forth in this Rule, subject to a maximum on each grant from each category:

   A. For local departments under any "Plan A" of Shelter Schedule B $250

      For local departments under any "Plan B" of Shelter Schedule B $240.

*Except that:*

a. If the requirements of a child over 18 are included to enable him to complete high school or training for employment (III - 3, C), the grant may exceed the maximum by the amount of such child's needs.

b. If the resource of support is paid as a refund (V-2, F), the grant may exceed the maximum by an amount of such refund. This makes consistent the principle that the amount from public assistance funds does not exceed the maximum.

B. A grant is subject to any limitation established by any existing rule on insufficient funds.

2. *GPA or ADC-E is not Available* — To supplement full-time wages. To meet need due to being disqualified for unemployment insurance. To supplement unemployment insurance; *except* when the individual receiving it is enrolled in an educational and/or training program to learn a skill needed to have opportunity for employment, acquire a new skill which is in demand in the labor market, or improve an existing skill.

3. *Period Covered and Method of Payment* — The period covered by a grant shall be the calendar month. The amount of the grant is calculated on a monthly basis and is paid by check, unless otherwise specified by local policy. It is paid for current need and may not be paid for a past period excepting as specifically permitted by the State Manual.

# EXHIBIT B[1]

Public Assistance — Rule 200

SCHEDULE A

## STANDARD FOR DETERMINING COST OF SUBSISTENCE NEEDS

| *Number of persons in assistance unit (include unborn child as an additional person)* | I | II | III | IV | V |
|---|---|---|---|---|---|
| | MONTHLY COSTS WHEN | | | | |
| | *No heat or utilities included with shelter* | *Light &/or cooking fuel included with shelter* | *Heat with or without light included with shelter* | *Heat, cooking fuel & water heating included with shelter* | *Heat & all utilities included with shelter* |
| 1 person living—Alone | $ 51.00 | $ 49.00 | $ 43.00 | $ 40.00 | $ 38.00 |
| With 1 person | 42.00 | 41.00 | 38.00 | 36.00 | 35.00 |
| With 2 persons | 38.00 | 37.00 | 35.00 | 34.00 | 33.00 |
| With 3 or more persons | 36.00 | 35.00 | 34.00 | 33.00 | 32.00 |
| 2 persons living—Alone | 84.00 | 82.00 | 76.00 | 72.00 | 70.00 |
| With 1 other person | 76.00 | 74.00 | 70.00 | 68.00 | 66.00 |
| With 2 or more other persons | 72.00 | 70.00 | 68.00 | 66.00 | 64.00 |
| 3 persons living—Alone | 113.00 | 110.00 | 105.00 | 101.00 | 99.00 |
| With 1 or more other persons | 108.00 | 106.00 | 101.00 | 99.00 | 97.00 |
| 4 persons | 143.00 | 140.00 | 135.00 | 131.00 | 128.00 |
| 5 persons | 164.00 | 162.00 | 156.00 | 152.00 | 150.00 |
| 6 persons | 184.00 | 181.00 | 176.00 | 172.00 | 169.00 |
| 7 persons | 209.00 | 205.00 | 201.00 | 197.00 | 193.00 |
| 8 persons | 235.00 | 231.00 | 227.00 | 222.00 | 219.00 |
| 9 persons | 259.00 | 256.00 | 251.00 | 247.00 | 244.00 |
| 10 persons | 284.00 | 281.00 | 276.00 | 271.00 | 268.00 |
| Each additional person over 10 persons | 24.50 | 24.50 | 24.50 | 24.50 | 24.50 |

*Modification of Standard for Cost of Eating in Restaurant*

Add $15.00 per individual.

R. #314
11/67

## EXHIBIT B[2]

Public Assistance — Rule 200

SCHEDULE AA

### STANDARD FOR ROOM AND BOARD ARRANGEMENT FOR A CHILD

| *Kind of Care* | MONTHLY ALLOWANCE* | | |
|---|---|---|---|
| | *Room & Board* | *Clothing* | *Pre-added Totals* |
| *Regular Care* | | | |
| Infant up to 6 | $50.00 | $ 9.00 | $59.00 |
| 6 up to 12 | 50.00 | 15.00 | 65.00 |
| 12 and over | 60.00 | 19.00 | 79.00** |
| *Special Care* | | | |
| Infant up to 6 | $75.00 | $ 9.00 | $84.00 |
| 6 up to 12 | 75.00 | 15.00 | 90.00 |
| 12 and over | 75.00 | 19.00 | 94.00** |

*Regular Care* is that which requires the usual and ordinary supervision in the home.
*Special Care* is that which requires unusual supervision and attention from a home equipped to give such care.

* No other items allowable in the grant.

** When calculating need for mother of unborn child, add to maximum $24.50: $20.00 additional food allowance; $4.50 towards cost of layette.

R. #314
11/67



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## EXHIBIT B[3]

Public Assistance — Rule 200

SCHEDULE B — PLAN A

### STANDARD FOR DETERMINING COST OF SHELTER

Plan A to be used by the following local departments:

Allegany, Anne Arundel, Baltimore City, Baltimore County, Cecil, Montgomery, Prince George's

| *Number of persons in assistance unit* | I | II | III | IV | V |
|---|---|---|---|---|---|
| | MONTHLY COSTS WHEN | | | | |
| | *No heat or utilities included with shelter* | *Light &/or cooking fuel included with shelter* | *Heat with or without light included with shelter* | *Heat, cooking fuel & water heating included with shelter* | *Heat & all utilities included with shelter* |
| 1 or 2 persons | $ 35.00 | $ 37.00 | $ 43.00 | $ 46.00 | $ 48.00 |
| 3 persons | 35.00 | 38.00 | 43.00 | 47.00 | 49.00 |
| 4 persons | 35.00 | 38.00 | 43.00 | 47.00 | 50.00 |
| 5 or 6 persons | 45.00 | 48.00 | 53.00 | 57.00 | 60.00 |
| 7 or more persons | 45.00 | 49.00 | 53.00 | 57.00 | 61.00 |

R. #307
2-66

## EXHIBIT B[4]

Public Assistance — Rule 200

SCHEDULE B — PLAN B

### STANDARD FOR DETERMINING COST OF SHELTER

Plan B to be used by the following local county departments:

| | | | |
|---|---|---|---|
| Calvert | Frederick | Queen Anne | Wicomico |
| Caroline | Garrett | St. Mary's | Worcester |
| Carroll | Harford | Somerset | |
| Charles | Howard | Talbot | |
| Dorchester | Kent | Washington | |

| *Number of persons in assistance unit* | I | II | III | IV | V |
|---|---|---|---|---|---|
| | MONTHLY COSTS WHEN | | | | |
| | *No heat or utilities included with shelter* | *Light &/or cooking fuel included with shelter* | *Heat with or without light included with shelter* | *Heat, cooking fuel & water heating included with shelter* | *Heat & all utilities included with shelter* |
| 1 or 2 persons | $ 31.00 | $ 33.00 | $ 39.00 | $ 42.00 | $ 44.00 |
| 3 persons | 31.00 | 34.00 | 39.00 | 43.00 | 45.00 |
| 4 persons | 31.00 | 34.00 | 39.00 | 43.00 | 46.00 |
| 5 or 6 persons | 31.00 | 34.00 | 39.00 | 43.00 | 46.00 |
| 7 or more persons | 31.00 | 35.00 | 39.00 | 43.00 | 47.00 |

R. #307
2-66



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## EXHIBIT B[5]

Public Assistance — Rule 200

SCHEDULE E

### STANDARD FOR DETERMINING THE COST OF INSURANCE PREMIUMS

| *Age of Individual* | *Insurance "as paid" not to exceed a maximum monthly cost per individual* |
|---|---|
| Under 18 years | $0.25 |
| 18 through 64 years | .65 |
| 65 years and over | 1.10 |

SCHEDULE F

### STANDARD FOR DETERMINING THE COST OF SCHOOL SUPPLIES

| *School Grade* | *Monthly Cost Per Child in School* |
|---|---|
| In elementary school (Grades 1 through 6) | $0.50 |
| In junior or senior high school (Grades 7 through 12) | 1.00 |

R. #243
10-59

# EXHIBIT B[6]

Public Assistance — Rule 200

SCHEDULE G

## STANDARD FOR DETERMINING THE COST OF SPECIAL DIETS

| *Type of Diet* | *Monthly Cost* |
|---|---|
| *Plan A* | $19.00 |
| High calorie high protein high vitamin | |
| Severe sodium restricted | |
| Low carbohydrate | |
| Gluten free | |
| Ketogenic | |
| *Plan B* | 12.00 |
| Moderate sodium restricted | |
| Smooth bland | |
| Calorie restricted | |
| Modified fat | |
| Moderate fat high carbohydrate high protein | |

SCHEDULE H

## STANDARD FOR DETERMINING THE COST OF LAUNDRY

Cost of laundry may *not* be added to Standard for Nursing Home Care

| *Size of Family* | *Monthly Cost* |
|---|---|
| One or two persons | $2.00 |
| Three or more | 4.00 |

R. #306

# EXHIBIT B[7]

Public Assistance — Rule 200

SCHEDULE J

## STANDARD FOR DETERMINING AMOUNT OF RESOURCE IN FOOD

| Size Of Family | Monthly Amount of Resource | | | | | |
|---|---|---|---|---|---|---|
| | | For Specified Food Groups | | | | |
| | For All Food Items | Milk, Eggs & Meat | Milk & Meat | Milk & Eggs | Milk Only | Eggs Only |
| 1 person— | | | | | | |
| Living alone | $29.00 | $10.50 | $ 9.00 | $ 6.75 | $ 5.25 | $ 1.50 |
| Living with 1 other person | 26.00 | 9.75 | 8.35 | 6.25 | 4.85 | 1.40 |
| Living with 2 other persons | 25.00 | 8.25 | 7.00 | 5.40 | 4.15 | 1.25 |
| Living with 3 or more other persons | 24.00 | 7.50 | 6.35 | 4.90 | 3.75 | 1.15 |
| 2 persons— | | | | | | |
| Living alone | 52.00 | 19.50 | 16.75 | 12.50 | 9.75 | 2.75 |
| Living with 1 other person | 50.00 | 16.50 | 14.00 | 10.75 | 8.25 | 2.50 |
| Living with 2 or more other persons | 48.00 | 15.00 | 12.75 | 9.75 | 7.50 | 2.25 |
| 3 persons— | | | | | | |
| Living alone | 75.00 | 25.00 | 21.25 | 16.25 | 12.50 | 3.75 |
| Living with 1 or more other persons | 72.00 | 22.50 | 19.00 | 14.75 | 11.25 | 3.50 |
| 4 persons | 95.00 | 30.00 | 25.50 | 19.50 | 15.00 | 4.50 |
| 5 persons | 112.00 | 35.00 | 29.75 | 22.75 | 17.50 | 5.25 |
| 6 persons | 127.00 | 39.50 | 33.50 | 25.75 | 19.75 | 6.00 |
| 7 persons | 147.00 | 44.00 | 37.25 | 28.75 | 22.00 | 6.75 |
| 8 persons | 168.00 | 48.50 | 41.00 | 31.75 | 24.25 | 7.50 |
| 9 persons | 188.00 | 53.00 | 45.00 | 34.50 | 26.50 | 8.00 |
| 10 persons | 208.00 | 57.50 | 48.75 | 37.50 | 28.75 | 8.75 |
| Each additional person over 10 persons | 20.00 | 4.50 | 3.75 | 3.00 | 2.25 | .75 |

R. #312

5-67

# EXHIBIT B[8]

Public Assistance Rule 200

SCHEDULE K

## STANDARD FOR DETERMINING AMOUNT OF RESOURCES IN CLOTHING

| *Number of Persons in Assistance Unit* | *Monthly Amount of Resource* |
|---|---|
| One person | $ 4.50 |
| 2 persons | 9.00 |
| 3 persons | 14.50 |
| 4 persons | 20.00 |
| 5 persons | 24.00 |
| 6 persons | 28.00 |
| 7 persons | 31.50 |
| 8 persons | 35.00 |
| 9 persons | 38.50 |
| 10 persons | 42.00 |
| Each additional person over 10 persons | 3.50 |

R. #307

*United States District Court for the District of Maryland*

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## MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION FOR A TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

### I. Introduction

This is a class action for declaratory and injunctive relief brought by Plaintiffs who are recipients of public assistance under the Maryland Program for Aid to Families with Dependent Children, against public welfare officials of the State of Maryland challenging the constitutionality of the maximum grant provision, Rule 200 VII, 1. of the *Manual of the Department of Public Welfare*. Rule 200 imposes an absolute limit on the amount of AFDC assistance to a family unit regardless of the actual need of the family as computed under schedules issued by the State Board of Public Welfare of the State of Maryland.

This court has jurisdiction to entertain this action since plaintiffs seek to have a state-wide regulation declared unconstitutional and to enjoin its operation on the grounds of its repugnance to the United States Constitution. The Court's attention is also respectfully directed to the cases cited in Plaintiffs' *Points and Authorities In Support of Application For A Three-Judge Court*, and in particular the case of *Smith v. King*, 277 F. Supp. 31 (M.D. Alabama, 1967), probable jurisdiction noted, 390 U.S. 903 (1968), also a suit for injunctive relief against enforcement of a statewide regulation, set forth in the *Alabama Manual for Administration of Public Welfare*.

### II. Statement of Facts

Plaintiffs are members of a class composed of needy parents of dependent children and their needy dependent children, residing in the State of Maryland and eligible to receive public assistance under the Maryland Aid to Families with Dependent Children (AFDC) Program. The amount

of this aid is and has been restricted and limited by the application and enforcement of the "maximum grant" provisions hereby complained of, to wit: Rule 200 VII 1., Maryland *Manual of the Department of Public Welfare.*

Plaintiff, Linda Williams, is an adult citizen of the United States and a resident of the City of Baltimore, State of Maryland. She is the mother and sole support of the Plaintiff children: Dorothy, age 16; Linda Gayle, age 14; Mildred, age 12; James, age 10; Anthony, age 9; Ronnie, age 7; Angela, age 5; Wanda, age 4; all of the children named live with her in a place of residence maintained by her as her home. The Plaintiff's husband, Willie Williams, the father of all the named children, is continuously absent from the plaintiff's home, having deserted her after the birth of their last child. Plaintiff has no income, resources, support or maintenance other than the public assistance which she receives in the amount of $250 a month, which is the maximum grant permitted under AFDC in Baltimore City, regardless of the size of the family unit and its actual need.

The plaintiffs, Junius Gary and Jeanette Gary, his wife, are adult citizens of the United States and residents of the City of Baltimore, State of Maryland, and Mr. Gary is the sole support of the Plaintiffs' children: Junius, age 11; Catherine, age 19; Anthony, age 9; James, age 8; Lynn Dora, age 7; Pamela, age 6; Mark, age 4; Thelma, age 4. All of the children of Mr. and Mrs. Gary live with them in their place of residence maintained by them as their home. Mr. Gary suffers from a severe neurological condition, which causes him to have seizures, dizzy spells and loss of consciousness. He has been found to be completely disabled from working. Mrs. Gary is required at home to care for her children, and is also in ill health, being treated at a hospital clinic for hypertension and painful conditions of her arms and legs. The Plaintiffs, Mr. and Mrs. Gary, have no income, resources, support or maintenance other than the $250 a month they receive in public assistance, which is the maximum grant they are entitled to under the Maryland Aid to Families with Dependent Children Program (hereinafter referred to as AFDC program).

The effect of applying the "maximum grant" regulation by the State of Maryland is to reduce the Plaintiffs and their families to a standard of living substantially below that established as a minimum standard of need by the State of Maryland Department of Public Welfare; the minimum standard of need formulated for Mrs. Williams and her eight children by the Department of Public Welfare, including the cost of insurance premiums, school supplies and laundry, is $296.15 per month, $46.15 more than the maximum grant of $250 per month which she actually receives; the standard of need formulated by the Department, including the cost of insurance premiums, school supplies and laundry, for Mr. and Mrs. Gary and their eight children is $331.50 per month, $81.50 per month more than the maximum grant of $250 per month which they actually receive. (The above needs are determined in accordance with the schedules attached to the Bill of Complaint as Exhibit B, representing the schedules for establishing need in the Maryland *Manual of the Department of Public Welfare.*)

## III. Argument

### *Introduction*

This court "* * * may, at any time, grant a temporary restraining order to prevent irreparable damage * * *." Title 28 U.S.C. Sec. 2284 (3). As to the standards for the granting of a preliminary injunction, these have been clearly stated in *Embassy Dairy v. Cammalier*, 211 F. 2d 41 (1954). In that case it was stated on page 48:

> "* * * Whether or not a preliminary injunction should issue is ordinarily a matter for the discretion of the District Court to be exercised upon this series of estimates: 'The relative importance of the rights asserted and the acts to be enjoined, the irreparable nature of the injury allegedly flowing from denial of preliminary relief, the probability of the ultimate success or failure of the suit, the balance of damage and convenience generally.' (Quoted from *Communist Party v. McGrath*, 96 F. Supp. 47, 48 (D.C. D.C., 1951)."

A. *Plaintiffs are suffering irreparable injury because of the enforcement by the Defendants of the "maximum grant" regulation in the payment of welfare assistance.*

Where issues raised by attack on the constitutionality of a state statute or regulation discloses that something more than a frivolous or unreasonable attack is being made on the regulation and where continued enforcement will result in greater injury to plaintiffs than to Defendants, should the regulation ultimately be held invalid, enforcement of the regulation should be temporarily enjoined pending determination as to its constitutionality. *Traffic Tel. Workers Federation of N.J. v. Driscoll*, 71 F. Supp. 681 (D.C. N.J. 1947). It is conceded that in any motion for a preliminary injunction, the court must find as a condition of granting the relief requested that irreparable injury will be suffered by the Plaintiff if relief *pendente lite* is not granted. *Virginia Petroleum Jobbers Ass'n v. Federal Power Commission*, 259 F. 2d 921 (C.A. D.C. 1958).

The plaintiffs and their minor children are in great, immediate and continuing need of public assistance commensurate with the minimal standards of need as established by the Defendant Department. The Plaintiff parents have no other source of support to provide their families with food, shelter and the other necessities of life. As set forth in greater particularity in their Bill of Complaint, and in their affidavit in support of motion for a temporary restraining order and preliminary injunction, the Plaintiffs are faced with a difficult choice. They must choose between keeping their families intact, an express purpose of the Federal Social Security Act (42 U.S.C. Sec. 601 et seq.) and Article 88A of the Annotated Code of Maryland (1957 ed.) sec. 44A, with inadequate food, clothing and shelter; or separating their families by placing some of their children in institutions or foster homes, since the present provisions enable the needs of a child in a large family to be met if the child is so placed. Each choice means immediate and certain irreparable injury to the families' cohesiveness and unity. The plaintiff parents

wish to keep all of their children at home and to provide them with the basic necessities of life.

B. *Defendants will suffer no substantial damage or inconvenience if assistance is granted to Plaintiffs pendente lite, whereas Plaintiffs and their children will suffer substantial and irreparable harm.*

If the plaintiff parents would receive public assistance payments in the amount determined by the Defendant Department of Public Welfare, to be the minimal standards required for the support of the families of the Plaintiff parents, which is in excess of the maximum grant of $250 per month, the amount that they now receive, the State of Maryland would suffer *de minimis* injury. The plaintiff, Linda Williams, would be eligible to receive $296.15 per month for herself and her eight children, $46.15 more than the maximum grant of $250 per month which she actually receives. The plaintiffs, Junius Gary and Jeanette Gary, his wife would receive $331.50 per month for themselves and their eight children, $81.50 per month more than the maximum grant of $250 per month, which they actually receive. Although the amounts received in excess of the maximum grant by the plaintiffs represents for them their only possibility of retaining their family unit, in terms of the effect it would have upon the Defendant, State Department of Public Welfare, when compared to the more than $89,396,891.43 which was spent in the year ending June 30, 1967, by the Department of Public Welfare, the additional grant to the Plaintiffs of $46.15 per month for the Williams family and $81.50 per month for the Gary family is so inconsiderable as to be *de minimis*. Such a temporary restraining order was granted by this Honorable Court in the case of Mantell v. Dandridge, (Civil Action #18792, Dec. 4, 1967) to prevent irreparable injury to Plaintiffs as a consequence of the State of Maryland's statutory requirement of one year's residency for public assistance. A finding of *de minimis* damage was explicitly made by the three-judge court in a number of the other residency cases in other federal district jurisdictions.

A three-judge court in the District of Columbia stated:

> "* * * Plaintiffs will suffer irreparable loss, injury and damage without comparable loss to the public unless preliminary relief is granted * * *."

*Harrell v. Tobriner*, 279 F. Supp. 22 (D.C. D.C. 1967), compare also the case of *Smith v. Reynolds*, 277 F. Supp. 65 (E.D. Pa. 1967), *Ramos v. Health and Social Services Board*, 276 F. Supp. 474 (E.D. Wisc. 1967) (preliminary injunction granted); *Denny v. Health and Social Services Board* (Civil Action No. 67-C-426, E.D. Wisc., temporary restraining order granted December 22, 1967); *Johnson v. Robinson* (Civil Action No. 67-C-1883, N.C. 111, preliminary injunction granted December 28, 1967); *Porter v. Graham* (Civil Action No. Çiv. -2348- Tucson, D. Ariz., preliminary injunction granted January 24, 1968.)

There, as in the present case, the record disclosed on its face that something more than a merely capricious or wholly unreasonable attack was being made on a state regulation, that important rights were at stake, and that denial of relief would result in greater injury to applicants than would be inflicted upon defendants by the granting of relief, and in those courts, temporary or preliminary relief was granted. Compare also *Traffic Tel. Workers v. Driscoll, supra.*

In *Woods v. Wright*, 334 F. 2d 269 (5th Cir., 1964) the Circuit Court of Appeals held that where Negro children were expelled from school without a hearing after being arrested in a civil rights demonstration, the District Court should have issued a temporary restraining order prohibiting the expulsions and ordering the children readmitted to school. In so doing, the court stated:

> "* * * When there is a clear and imminent threat of an irreparable injury amounting to manifest oppression it is the duty of the court to protect against the loss of the asserted right by a temporary restraining order. * * *" 334 F. 2d at 374.

If expulsion of children from school is sufficiently serious harm to require a temporary restraining order, how much more warranted is such an order in this case to protect the minimal subsistence level of life and health of the plaintiffs. As was stated in the case of *Harris Stanley Coal & Land Co. v. Chesapeake & O. Ry. Co.*, 154 F. 2d 450, 453 (6th Cir., 1946), *cert. denied.* 329 U.S. 761 (1946):

> "* * * A court of equity will not gamble with human life, *at whatever odds* and for loss of life there is no remedy that in an equitable sense is adequate. * * *"

C. *The Temporary Restraining Order and Preliminary Injunction Should Be Issued Since Plaintiffs Will Likely Prevail On The Merits.*

1. *The Maximum Grant Provision of Rule 200, Section VII 1. in Maryland's Aid to Families with Dependent Children Program violates the equal protection clause of the Fourteenth Amendment to the United States Constitution.*

The guarantee of equal protection of the laws under the Fourteenth Amendment to the United States Constitution has been stated to mean that:

> "The courts must reach and determine the question whether the classifications drawn in a statute are reasonable in light of its purpose * * *." *McLaughlin v. Florida*, 379 U.S. 184, 189 (1964).

While the government may classify people for various purposes it may not classify on arbitrary or irrational grounds. *Yick Wo v. Hopkins*, 118 U.S. 356 (1886), *Carrington v. Rash*, 380 U.S. 89 (1965). In the instant case the classification is subject to even closer scrutiny because it is created by administrative regulation under Rule 200 VII 1., issued by the Maryland State Department of Public Welfare. The same deference to legislative judgment is not due to administrative rule-making and it is clear that an agency may not make rules or regulations which are out of harmony with the act being administered. 1 Am. Jur. 2d *Administrative Law*, Section 132, and cases there cited. The

classification created by Rule 200, VII 1. is unreasonable in light of the purposes of the Aid to Families with Dependent Children (hereinafter referred to as AFDC program). The most accurate guide to those purposes in Maryland is the statutory declaration of purpose in Section 44A of Article 88A of the Annotated Code of Maryland (1957 ed.):

> "* * * It is hereby declared that the primary purpose of aid given under this subtitle is the *strengthening of family life through services and financial aid*, whereby families may be assisted to maximum self-support in homes meeting the requirements of child care established by law in this State * * *." (Emphasis supplied).

This statutory declaration of purpose implicitly refers to the social evil that the AFDC program reaches: the instability of family units that lose the support of one parent. This declaration is reinforced by a similar federal declaration of purpose in the Social Security Act of 1935, 42 U.S.C. §601:

> "* * * *(to encourage) the care of dependent children in their own homes* or in the homes of relatives by enabling each state to furnish financial assistance and rehabilitation and other services, as far as practicable under the conditions in such state, to needy dependent children and the parents or relatives with whom they are living, to help maintain and strengthen family life and to help such parents or relatives to attain or retain capability for the maximum self-support and personal independence consistent with the maintenance of continual parental care and protection * * *." (emphasis supplied).

The AFDC program in Maryland is required by the Social Security Act, 42 U.S.C. §602, to implement these federal policies in order to qualify for federal grants to its AFDC program. Rule 200 VII 1. provides that:

> "1. Amount — the amount of the grant is the resulting amount of need when resources are deducted from

requirements as set forth in this Rule, *subject to a maximum of each grant from each category:*

A. For local departments under any "Plan A" of Shelter Schedule B $250

For local departments under any "Plan B" of Shelter Schedule B $240 . . ." (emphasis supplied).

Rule 200 VII 1. imposes an absolute maximum limit on AFDC assistance regardless of the actual need of the recipient family unit. For example, the Department of Public Welfare of the City of Baltimore computes the costs of subsistence needs of a family of seven persons at $254.00 per month. For a family of eight persons subsistence needs are calculated to be at least $280.00 per month. ( See schedule attached to Bill of Complaint as Exhibit B.) The maximum grant permitted in Baltimore City is $250.00 per month. In effect the maximum grant provision of Rule 200 VII 1. limits AFDC assistance to an amount less than actual need in family units of seven persons or more. Obviously, the disparity between actual need and the amount of AFDC assistance increases in larger family units.

Rule 200 VII 1. creates two classes of needy dependent children and their parents. The first class, families of six persons or less, is granted AFDC assistance equal to actual need; the second class, families of seven persons or more, receives an amount of assistance which not only is insufficient to meet actual need but also is unrelated to actual need. The classification created by Rule 200 VII 1. is based solely on the size of the family unit. In the instant case the minimal standard of need for the family unit of the plaintiff, Linda Williams, is $296 per month according to the schedule issued by the Maryland State Board of Public Welfare. The application of the arbitrary maximum grant of $250 denies plaintiff's family the basic necessities of adequate food and shelter.

None of the purposes of the AFDC program is served by the classification created by Rule 200 VII 1. Instead of strengthening family life, large family units are encouraged to separate in order to meet their needs. If plaintiff,

Linda Williams, placed two of her eight children who are 12 years of age or over with eligible relatives, each child so placed would be entitled to receive $79 per month as an assistance unit. In addition, the rest of the old family unit would still qualify for the maximum grant of $250. The family unit would thus be receiving a total amount of AFDC assistance of $408, as a result of the dissolution of the family unit. However, the dissolution of family units prompted by Rule 200 VII 1. defeats the very purpose of the AFDC program.

As an economy measure Rule 200 VII 1. still lacks a constitutionally permissible purpose. This issue was squarely faced in *Collins v. State Board of Social Welfare*, 248 Iowa 369, 81 N.W. 2d 4 (1957) in which the court held that the Iowa maximum grant provision violated the equal protection clause of the Iowa Constitution. Equal protection under the Iowa Constitution is identical with the federal guarantee. *Dickinson v. Porter*, 240 Iowa 393 at 400, 35 N.W. 2d 66 at 77 (1948). The court stated in the *Collins* case at p. 7 of 81 N.W. 2d:

> "The books are replete with cases dealing with the above constitutional provision both here and elsewhere. The general rule is that if there is any reasonable ground for the classification and it operates equally upon all within the same class, there is uniformity in the constitutional sense . . .
>
> Under the record it appears that the State Board in the administration of the Act and to insure a uniform state-wide program for aid to dependent children (Section 239. 18, Code, 1954) has established a standard schedule of amounts necessary for the minimum of subsistence, which amounts are based upon the needy-per-child basis . . . Under the chapter prior to the amendment each child receives such amount irrespective of the number in the home. Under the chapter as amended each child may receive the minimum amount without regard to the number in the home, up to the point where the sum total reaches $175, at which point additional assistance to that home

terminates. Stating it another way, under the amendment assume that the minimum amount per child is $47 per month. Each child receives the amount provided the total amount paid to any one recipient does not exceed $175. If in excess of this amount, the payment to such recipient is on a *pro-rata* basis per child in the home. However, if the instant children should be distributed among the homes of various relatives named in Section 239.1 (4), and nothing in the chapter seems to prohibit such distribution, each of the involved children would be entitled to the minimum allowance.

The amendment on its face appears to be, and was, we think, intended as an *economy measure*. In effect it is a sub-classification of the original classification, i.e., dependent children, based solely on the number of children in the home, with no consideration as to need, a circumstance completely disconnected with the basic classification and the purpose and reason therefore. See *Keefner v. Porter*, 228 Iowa 844, 293 N.W. 501. We think the amendment is clearly discriminatory between dependent children as defined in Section 239.1 (4) and is purely arbitrary and unreasonable in view of the announced purpose of the act." (emphasis added).

In the welfare residency cases courts have stated repeatedly that the preservation of the public purse does not justify separate treatment of persons similarly situated. *Thompson v. Shapiro*, 270 F. Supp. 331 (D. Conn. 1967), probable jurisdiction noted, 36 L.W. 3286 (1968); *Green v. Department of Public Welfare*, 270 F. Supp. 173 (D. Del. 1967); *Harrell v. Tobriner*, 279 F. Supp. 22 (D.C. D.C. 1967). In *Green* the court stated, at p. 177 of 270 F. Supp., that, "The protection of the public purse, no matter how worthy in the abstract, is not a permissible basis for differentiating between persons who otherwise possess the same status in their relationship to the State of Delaware." In other words, the arbitrary selection of a class which bears the burden of state economizing is constitutionally

impermissible. *Rinaldi v. Yeager*, 384 U.S. 305 (1966); *Green v. Department of Public Welfare*, 270 F. Supp. 173 (D. Del. 1967), *Smith v. Reynolds*, 277 F. Supp. 65 (E.D. Pa. 1967). The governmental economizing is even more arbitrary here because, unlike the invalid residency requirement, the maximum grant provision does not even arguably protect against unscrupulous recipients.

Furthermore, in light of our expanding economy, it is fallacious to assume that welfare expenditures are rising. In Research Report Number 2, July, 1967, published by the defendant, State Department of Public Welfare of Maryland, it is stated on p. 6:

> Costs and numbers of recipients of assistance have risen due to the extension of Public Welfare services and benefit levels; it must be noted however that while actual dollar costs have risen, Public Welfare expenditures have decreased as a percentage of both National Personal Income and Gross National Product.

2. *Rule 200 VII 1. violates Section 601 of the Federal Social Security Act which requires that assistance meet basic needs in order to strengthen the family unit.*

The federal policies of the Social Security Act of 1935 are expressed in Section 601 of Title 42 of the United States Code:

> "... *to help maintain and strengthen family life* and to help such parents or relatives to attain or retain capability for the maximum self-support and personal independence consistent with the maintenance of continual parental care and protection ..." (emphasis supplied).

The administrative interpretation of basic federal policy which is binding on the states is set forth in regulation 3401, Part IV of the Federal Handbook of Public Assistance Administration:

> "To live in the family to which he belongs is the foundation of a child's security. The public has an inter-

> est and an obligation in sustaining the contribution which parents and immediate family make to the development of a child. Financial inability to meet a child's needs, therefore, should not be allowed to force a parent to surrender responsibility for bringing up the child."

Section 601 clearly expresses a legislative intent to strengthen family life through AFDC assistance.

The federal statutory policy of Section 601 of the Social Security Act is binding on the states. *Cf. State v. Bandjord*, 92 P. 2d 273, 279 (Mont. 1939). See also, *Pearson v. State Social Welfare Board*, 54 C. 2d 184, 353 P. 2d 33, 35, 39 (1960); *Fenton v. Department of Public Welfare*, 182 N.E. 2d 528, 530 (Mass. 1962). Maryland statutes require that the State Department of Public Welfare comply with all pertinent federal requirements in order to qualify for federal grants to its AFDC program. Section 15, Article 88A of the Annotated Code of Maryland. Moreover, the State of Maryland has adopted the very language of section 601 as its AFDC policy in Section 44A of Article 88A of the Annotated Code of Maryland which states that:

> "It is hereby declared that the primary purpose of aid given under this subtitle is the strengthening of family life through services and financial aid, whereby families may be assisted to maximum self-support in homes meeting the requirements for child care established by law in this state."

Rule 200 VII 1. imposes an arbitrary limit on the amount of AFDC assistance regardless of the actual need of the family unit. It ignores the clear legislative mandate of Section 601 to meet actual need. Furthermore, it encourages the dissolution of family units in violation of the federal and state policy of strengthening family life. The policies of meeting actual need and strengthening family life are interwoven for surely a healthy family environment is possible only if actual needs are met.

Administrative rules and regulations must conform to legislative policy. *SEC v. Chenery*, 318 U.S. 80 (1943),

*Thomas v. Owens*, 4 Maryland 189 (1853). In the ancient and authoritative case of *Thomas v. Owens* the court dealt with a suit to compel payment to a comptroller that the Maryland Constitution and law said he should receive. The court so ordered, noting that legally defined amounts of payment could not be reduced by agencies or officials any more than payments could be withheld. To the offending official the court at p. 225 of 4 Md., stated that, ". . . this fiat of the Supreme Will is not to be nullified by the mere *ipse dixit* of a mere ministerial officer." Nor should the legislative command to aid the individual need of needy dependent children and their parents be nullified by the arbitrary regulation of the State Board of Public Welfare.

A similar question of *ultra vires* administrative action was raised in *Staub v. Department of Public Welfare*, 198 P. 2d 817, (1948). The welfare department fixed a ceiling on the amount of assistance to a needy blind person even though that amount did not meet the recipient's needs as computed by the department itself. The court reviewed pertinent state statutes and regulations which required assistance to meet actual need. The court set aside the administrative action of the welfare department as "arbitrary and capricious" (at p. 825 of 198 P. 2d).

3. *The Maximum Grant Provisions of Rule 200 (VII) (1) Violates the Right of Marital Privacy of AFDC Recipients Under the Due Process Clause of the Fourteenth Amendment to the United States Constitution.*

Even if the Court rules that the maximum grant provision of Rule 200 (VII) 1. does not deny plaintiff the equal protection of the laws and does not violate Section 601, of 42 U.S.C., the maximum grant provision punishes AFDC recipients with large families in violation of their right of marital privacy. *Griswold v. Connecticut*, 381 U.S. 479 (1965). The state cannot require that recipients of public assistance relinquish a cherished constitutional right as a condition of eligibility. *Sherbert v. Verner*, 374 U.S. 398 (1963), *Thompson v. Shapiro*, 270 F. Supp. 331 (D. Conn. 1967). The condition of family size is completely irrele-

vant to the purposes of AFDC assistance. In welfare residency cases courts have invalidated provisions that condition assistance on the relinquishment of the constitutional right of interstate travel. *Thompson v. Shapiro, supra, Green v. Delaware, supra, Harrell v. Tobriner, supra.* In our hierarchy of constitutional values surely the marital right of procreation ranks just as high. And, its relinquishment as a condition to equal AFDC assistance is equally repugnant to the Constitution. The Supreme Court has recognized a penumbral right of marital privacy in *Griswold v. Connecticut, supra.* The right of procreation has traditionally been zealously safeguarded against governmental interference. *Skinner v. Oklahoma,* 316 U.S. 535 (1942), *Griswold v. Connecticut, supra.* The government must show a compelling interest in order to justify the infringement by Rule 200 VII 1. of this fundamental constitutional right. *Bates v. Little Rock,* 361 U.S. 516 (1960), *Sherbert v. Verner,* 374 U.S. 398 (1963). A money benefit cannot be denied a person solely because he exercised a constitutionally protected right. *Speiser v. Randall,* 357 U.S. 513 (1958), *Harman v. Forssenius,* 380 U.S. 528, 540 (1965), *Garrity v. New Jersey,* 385 U.S. 493 (1967), *Thompson v. Shapiro,* 270 F. Supp. 331 (D. Conn. 1967), *Sherbert v. Verner, supra.*

Rule 200 (VII) 1. punishes AFDC recipients who exercise their freedom of choosing a large family. A family unit that decides to have a large number of children is denied an amount of assistance equal to its actual needs. This denial penalizes the birth of additional children in family units of six or more persons by withholding adequate food and shelter, even though they may all have been born before the family was ever required to apply for welfare benefits. For example, all of the children of Mr. and Mrs. Gary were born before Mr. Gary was forced by his illness to apply for welfare benefits and they have not had additional children while receiving AFDC assistance. Likewise, Mrs. Williams' children were all born prior to her need for welfare benefits. Nevertheless, they receive less than adequate assistance for minimal food and shelter needs even though they chose a large family be-

fore receiving AFDC assistance. Thus, Rule 200 (VII) 1. intrudes on the right of marital privacy both before and during the period of AFDC assistance. It imposes an unconstitutional burden on the exercise of a constitutional right. *Sherbert v. Verner, supra, Collins v. State Board of Social Welfare,* 248 Iowa 269, 81 N.W. 2d 4 (1957). The right of plaintiffs as married persons, to freedom of choice in procreation and reproduction is firmly established, *Griswold v. Connecticut,* 381 U.S. 479 (1965). A state may not penalize the exercise of a constitutional right by withholding benefits. *Sherbert v. Verner, supra.* See also the case of *Thompson v. Shapiro,* 270 F. Supp. 331 (D. Conn. 1967), in which the court held that a state may not punish the exercise of the freedom to travel from state to state by imposing an arbitrary durational residence requirement as a condition of receiving public welfare benefits.

4. *The Maximum Grant Provision of Rule 200 (VII) (1) Violates the Right to Life Guaranteed to the Plaintiffs Under the Fifth and Fourteenth Amendments to the United States Constitution.*

In introducing the Fourteenth Amendment in the United States Senate in 1868 Senator Howard of Michigan, stated:

> "* * * The last two clauses of the first section of the amendment disable a state from depriving * * * any person, whoever he may be, of life, liberty, or property without due process of law, or from denying him the equal protection of the laws of the State. * * * It establishes equality before the law, and it gives to the humblest, the poorest, the most despised of the race the same rights and the same protection before the law as it gives to the most powerful, the most wealthy, or the most haughty * * * Without this principle of equal justice to all men and equal protection under the shield of the law, there is no republican government and none that is really worth maintaining." William D. Guthrie, *Lectures on the 14th Article of Amendment To The Constitution of the United States,* Little, Brown and Co., 1898, p. 22.

In their often cited dissent Mr. Justice Field and Mr. Justice Strong, in the case of *Munn v. Illinois*, 94 U.S. 113, 142, defined the meaning of the term "life" as used in the 14th Amendment. They stated:

> "* * * by the term 'life', as here used, something more is meant then mere animal existence. The inhibition against its deprivation extends to all those limbs and facilities by which life is enjoyed. * * * The deprivation not only of life, but of whatever God has given to everyone with life, for its growth and enjoyment, is prohibited by the provision in question, if its efficacy be not frittered away by judicial decision."

The maximum grant provision of Rule 200, contained in the *Manual for the Department of Public Welfare* of the State of Maryland strikes at this most basic right of all, the right to life itself. It allows the Department of Public Welfare to determine the minimal subsistence needs of a family, and then to deny any family consisting of more than six units this minimal subsistence that the Department has itself defined to be necessary to life. The State of Maryland has established a system to provide for the necessities of life for the less fortunate members of its society, and then has placed in the balance "* * * all that makes life worth living." Cf *Ng Fung Ho v. White*, 259 U.S. 276, 284 (1922); *MacMullen v. City of Middletown*, 98 N.Y.S. 145, 150 (1906).

The tragic effect of the denial of the minimal subsistence benefit necessary for life was recently recognized in the report of the President's National Advisory Commission on Civil Disorders. In recognizing that the national average grant for welfare recipients was well below the poverty subsistence level of $3,335 for an urban family of four, the commission reported the effect of this inadequacy. It quoted the Advisory Council of Public Welfare, in stating that these inadequacies:

> "* * * are themselves a major source of such social evils as crime and juvenile delinquency, mental illness, illegitimacy, multi-generational dependency, slum en-

vironments, and the widely deplored climate of unrest, alienation, and discouragement among many groups in the population." *Report of the National Advisory Commission on Civil Disorders*, Bantam Books, 1968, p. 460.

This description is borne out in the instant cases. In her affidavit, the plaintiff, Linda Williams, states that she is constantly in debt because of her inability to meet the bare necessities of life, and that her children are presently without adequate shoes and clothing, and sometimes are required to stay home from school, because they do not have the necessary clothes to wear, especially in the wintertime. Her oldest daughter has just stopped going to school because she does not have the right kind of clothes to wear and is ashamed to go with what she has. Mrs. Williams states in her affidavit that if she could simply afford the necessities of life for her children, she could provide the kind of home life that they need to grow up to be "good people." She is constantly faced with the worry of having to break up her family because of her inability to meet her expenses.

The plaintiffs Junius Gary and his wife, Jeanette Gary, point to the same difficulties in their affidavits, concerning their children and their inability to clothe them properly for school. They also point out that in the wintertime their gas and electricity bill is always behind because of inadequate funds, which causes the gas and electricity to be shut off, leaving them without heat and light in their home. They are not even left with sufficient money to participate in the food stamp program which would allow them to purchase more nutritious food in greater quantity.

The situation that the Williams family and the Gary family are left in certainly violates that constitutional protection to a life of more than "mere animal existence". *Munn v. Illinois, supra*, at page 142. The deprivation here is of everything necessary to the growth and development of life.

Moreover, the administrative classification deprives the plaintiffs of other liberties secured by the due process

clause of the Fourteenth Amendment. Without the bare necessities of life the full exercise of freedom of speech, for example, is curtailed. As a result poor persons have not fully participated in the political processes. Cf. *United States v. Carolene Products Co.*, 304 U.S. 144, 147 (1938); *Hobson v. Hansen*, 269 F. Supp. 401, 513 (D.C. D.C. 1967). When a legislative classification has the effect of placing such additional burdens on a class of persons characterized by its extreme poverty and a practical inability to escape from the problems which the classification creates, the court gives close scrutiny and requires full justification before permitting such a result. *Harper v. Board of Elections*, 383 U.S. 663 (1966); *Hobson v. Hansen, supra* at 513. The right to life guaranteed by the Fourteenth Amendment recognizes that man is not a mere animal but a political and social creature as well. *Munn v. Illinois, supra.*

The City of Baltimore, in which the maximum grant regulation is most harshly felt, has itself acknowledged the complete inadequacy of the welfare grant. In submitting its application to the Department of Housing and Urban Development, for a grant to plan a comprehensive city demonstration program, the city, in its application, comments on the public welfare program as follows:

> Public welfare has the mission of providing a guarantee against economic poverty and related social deprivation. This guarantee means that public welfare should be available to all who need its protection, *be adequate to their needs consistent with the standards of this society for minimum decent living, and available as a matter of legal right.* (Emphasis supplied.)
>
> Public assistance payments are so low in Baltimore (as elsewhere in the United States) that the public welfare program itself can be termed a major source of poverty. Part III, Page 3 of 1 Planning Grant Application: Title 1 of the Demonstration Cities and Metropolitan Act of 1966.

The application concludes that:

> At this stage in the planning process, it does not appear that there are local laws, regulations or requirements which are glaringly inconsistent with the objectives of the program, *with the exception of public welfare laws,* and regulations which are primarily national and state laws and regulations. (Emphasis supplied.) Part III, Page 1 Planning Grant Application, Title 1 of the Demonstration Cities and Metropolitan Act of 1966.

It is apparent that the inadequate welfare grant which is magnified by the maximum grant regulation under attack here, could well cause the City of Baltimore serious difficulty in obtaining approval of its application for a model cities program, and thus further penalize the poor of the inner city.

CONCLUSION

John Adams, one of the founders of the American Republic once wrote: "The poor man's conscience is clear yet he is ashamed * * * he is not disapproved, censured or reproached; he is only not seen * * * to be wholly overlooked, and to know it, are intolerable."

The poor of our society, created and perpetuated by a welfare system which is characterized by inadequate grants and unrealistic regulations are no longer hidden, however. And as the court stated in the very recent case of *Edwards v. Habib:* opinion of May 17, 1968, (C.A. D.C. No. 20,883):

> As judges, "we cannot shut our eyes to matters of public notoriety and general cognizance. When we take our seats on the bench we are not struck with blindness, and forbidden to know as judges what we see as men." *Ho Ak Kow v. Nunam,* C.C.D. Cal. 12 Fed. Cas. 252 (No. 6546) (1879).

This court cannot fail to take judicial notice of the vicious cycle of poverty created in our cities by the illegality and unfairness of our present welfare system. The

maximum grant provision, Rule 200 VII 1, creates an arbitrary classification that penalizes recipient family units of more than six persons. A classification based on family size is totally unrelated to the purpose of the AFDC program. According to the schedules of the defendant, State Department of Public Welfare, the amount of assistance granted to Plaintiff Linda Williams and her family, and plaintiffs Junius and Jeanette Gary and their family, is inadequate to sustain even a minimal standard of life. If this Honorable Court enjoins the operation of Rule 200 VII 1. plaintiffs could provide for the minimal subsistence needs of their families. For all of the foregoing reasons, plaintiffs respectfully request that their motion for a preliminary injunction and a temporary restraining order be granted to the plaintiffs and their children.

(Signatures and Certificate of Service.)

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*United States District Court for the District of Maryland*

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SUPPLEMENTARY MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION FOR A TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION.

I. *Legislative History and Administrative Interpretation Regarding the Maximum Grant Regulation.*

At the Court's request, counsel for Plaintiffs have reviewed the legislative history of the Social Security Act of 1935, Title IV, Grants to States for Aid and Services to Needy Families with Children. The Senate and House Reports since the initial enactment of the Act, and testimony that was given concerning the various enactments, as well as the administrative interpretation of the act, have been examined, to determine congressional concern, if any, with a "maximum grant" regulation, such as the one here under attack. The original act and the subsequent amendments to it, while they do not speak directly to the

problem of maximum grant regulations, contain considerable language which support the position that a maximum grant regulation, such as the one here under attack, does defeat the purposes for which the AFDC provisions of the Social Security Act, 42 USC, Sec. 601, et seq. were enacted. The language referred to is contained in the legislation itself, relevant reports from congressional committees connected with the promulgation of such legislation, HEW interpretation of the Social Security Act, and statements of members of Congress which appear in the congressional record. All of the sources support the position that the original congressional intent was clearly to meet the objectives of the AFDC provisions of the Social Security Act, as presently set forth in 42 USC Sec. 601, to "* * * strengthen family life and to help such parents or relatives to attain or retain capability for the maximum self-support and personal independence consistent with the maintenance of continuing parental care and protection * * *" and to encourage "* * * the care of dependent children in their own homes or in the homes of relatives * * *."

Senate Report No. 628, 74th Congress (May 13, 1935) states: "Through cash grants adjusted to the *needs* of the family it is possible to keep young children with their mother in their own home, thus preventing the necessity of placing children in institutions. This is recognized by everyone to be the least expensive and altogether most desirable method for meeting the needs of these families that has yet been devised." (Emphasis supplied.) The Report goes on to note that because in many States the aid is inadequate to meet the objective of providing for the needs of families, there was a requirement for Federal aid to States.

The initial House version of the Social Security Act reiterated the viewpoint of the Senate committee. It emphasized "* * * it has long been recognized in this country that the best provision that can be made for families of this description (without a potential breadwinner) is public aid with respect to dependent children

*in their own homes.*" House Report No. 615, 74th Congress (1935). (Emphasis supplied.)

Congressional testimony at the time of the consideration of the original Social Security Act adds considerably to the argument that a maximum grant regulation is inconsistent with the legislative intent of the Social Security Act. Senator Harrison of the Senate Committee on Finance, in explaining the House Ways and Means Committee's proposals of Title IV stated during the Senate debate: "* * * the provisions are not for general relief of poor children but are designed *to hold broken families together.*" (Emphasis supplied.) 79 Cong. Rec. 9269 (1935). Senator Wagner of Mississippi, the sponsor of the Social Security legislation, emphasized the need for flexibility in allocating funds, by commenting that: "* * * These grants will be extended primarily upon a matching basis in order to stimulate the States to action, but they will take full account of the special needs of those localities which are genuinely without capacity to help themselves." 79 Cong. Rec. 9286 (1935).

The present objectives of the Social Security Act were reaffirmed by the Act of August 1, 1956, which amended Title IV, by restating the purposes to include encouragement of care of dependent children in their own homes or in the homes of relatives with the same objective of "strengthening family life." August 1, 1956 c. 936 Title II, Section 312 (a), 70 Stat. 848.

Discussing the 1956 Amendments to Title IV of the Social Security Act, Senator Byrd, of the Senate Committee on Finance, stated that: "* * * Services that assist families and individuals to attain the maximum economic and personal independence of which they are capable provided a more satisfactory way of living for the recipients affected. To the extent that they can remove or ameliorate the causes of dependency they will decrease the time that assistance is needed." 102 Cong. Rec. 13034 (1956). In the same vein, Senator Magnuson proposed to liberalize the grants to dependent children "* * * to a level commensurate with other social security benefici-

aries * * *" (in order to alleviate) "* * * one of the significant deficiencies in our present social security legislation." 102 Cong. Rec. 13081, (1956). Similar sentiment was voiced by Representative Knox in commenting on the conference report of public assistance titles: "* * * I am gratified to observe that the amendments provided in the conference agreement to these public-assistance titles will insure to * * * our dependent children a liberalized *benefit level that more realistically recognizes the cost of even the barest subsistence today.* It should be recognized that people who are compelled to avail themselves of public assistance are entitled to an adequate benefit *commensurate with the costs of their living requirements in our present-day economy.*" (Emphasis supplied.) 102 Cong. Rec. 14835 (1956).

That an arbitrary maximum grant regulation on the amount of a grant to a family defeats the purposes of the Social Security Act, concerning AFDC, is further highlighted by examining the 1965 Amendment to the Act, subsection (a)(1) public law 89-97, Sec. 122, 401 (c), which increased the share of the average monthly assistance payment from 14/17 of the first $17 of assistance to a recipient, to 5/6 of the first $18 of such payment, thus raising the ceiling for federal participation from $30 to $32 a month *per recipient.* See 42 U.S.C.A. Sec. 603 (1967 Com. Annual Pocket Part) and Annotation thereto, concerning the 1965 amendment.

The purpose of the 1965 amendment was to improve and expand the public assistance program by increasing the federal matching share for cash payments for the needy aged, blind, disabled and families with dependent children. 1965 U.S. Code Cong. and Adm. News, at page 1944. It is of course noted that the method of improving and expanding the assistance to families with dependent children was by increasing the matching funds from $30 to $32 *per recipient,* not by giving an increase to the family as a whole. Such a method of increase makes sense when one finds that the amount of payments is based on the individual's need and on the cost for meeting that need. Thus, for the State arbitrarily to set a maximum grant for

family, without regard to the number of dependent children in the family, patently defeats the very purpose of the 1965 amendment and all the prior provisions of the Social Security Act which compute the amount of payment to the States on the basis of the number of recipients eligible for assistance.

This viewpoint is further reinforced by the 1967 amendment to the Social Security Act, Public Law 90-248, 90th Congress, H.R. 12080. While not specifically passing upon the matter of meeting the full needs of welfare recipients, the amendment does require in Section 402 (a)(23), that the amounts used by the State to determine the needs of *individuals* "* * * will have been adjusted to reflect fully changes in living costs, since such amounts were established * * *". It also requires adjustments of any maximums imposed by a State on the amount of aid paid to families in proportion to the rise in living cost.

Thus for the State arbitrarily to set a maximum grant per family, without regard to the number of dependent children in the family, patently defeats the very purpose of the Social Security Act, which has consistently computed the amount of payment to the State on the number of recipients eligible for assistance, and has amended the Act so as to meet the rise in the cost of living be determining how such rise has effected the needs of *individuals*.

In the testimony that was given, concerning the 1967 amendments to the Act, Wilbur J. Cohen, the present Secretary, Department of Health, Education and Welfare, had an interesting exchange with Senator Ribicoff, a member of the committee on finance, concerning the effect of failure to meet minimal needs which directly results from maximum grant regulations:

> Senator Ribicoff: I know, but you take all that into account in the standards that are being set. What they are receiving is not just a question of the amount they receive from the welfare agencies, you take into account all they receive. What happens to the child or the adult who receives so much less than what you

consider or what is considered a proper standard? How do they live?

Mr. Cohen: They have to live on the lesser amount.

Senator Ribicoff: How do they live?

Mr. Cohen: They have to cut back on their food and clothing and other needs to live on the amount that the state gives them.

Senator Ribicoff: Well, is not a study made or do not you know what happens to these people? I mean just what is happening to them?

Mr. Cohen: Well, I think that the evidence shows — I do not have it immediately before me — that many of these children and these families grow up without adequate food, without adequate medical care, and certainly their whole aspirations for improving in their education status are stunted, and I think that the evidence from the State administrators when you hear them will bear that conclusion out.

Secretary Gardner: It shows up most clearly, I think, in the medical data. You will find a higher incidence of just about every kind of medical disorder and physical handicap in these youngsters — malnutrition and everything else.

Senator Ribicoff: Well, in looking to the cost to society ultimately, the people who are below standard cause a greater drain eventually upon what the society has to pay out in every conceivable way, is that not right?

Senator Gardner: No question about that, Senator.

Hearings before the Committee on Finance, United States Senate 90th Congress, First Session on H.R. 12080, August 22, 1967.

In initially establishing the Act, Congress recognized that in the long run the least expensive and altogether most desirable method of providing for needy families was

cash grants adjusted to individual needs, and such failure, which directly results from a maximum grant regulation, in regard to large families, not only defeats the very purposes of the Act, but also may well result in a greater expense to the State, apart from the tragic cost in human resources to society and to the individuals in question.

An examination of what the Department of Health, Education and Welfare has said in this regard is also illuminating. The policies and standards for the public assistance program as administered by the states are set forth in the Handbook of Public Assistance Administration and related releases (hereinafter referred to as Handbook) issued by the Department. This Handbook describes its functions as follows (Pt. 1, Sec. 4210):

> "* * * The policies and standards are set forth in the form of interpretations of the Social Security Act, requirements for State plans, criteria for the administration of State plans, conditions for Federal financial participation, and recommendations for improving public assistance programs and administration * * * The Handbook constitutes the principal means of informing the States regarding official policies and standards * * *.
>
> * * * * * *
>
> 1. The Federal requirements described in this Handbook are based on the pertinent provisions of the Social Security Act, and *on the intent and purpose of the law as identified in official statements and as derived from the history of the legislation and from other available evidence.*" (emphasis supplied).

Thus, in the Handbook of Public Assistance Administration, Supplement A, Pt. II — A — 3000, it is stated:

> "* * * Sufficient funds should be made available by the State to meet need in full *in accordance with the State standards of need* and to assure that for the established State fiscal period, there will be continuity of operations under the plan throughout the State." (emphasis supplied).

HEW, in another section, Pt. IV, Sec. 42231, of the Handbook goes on to actually define what is meant by the phrase "Strengthening Family Life" which appears in 42 U.S.C. §602:

> Strengthening family life means sustaining and increasing the ability of parents to carry their parental responsibilities in the care, protection, and support of their children; and to sustain and increase the capacities of children to carry their appropriate role in total family life, to the end that children may have a home life conductive to healthy physical, emotional, and social growth and development. Families have the right and responsibility to provide for adequate health care, education, and vocational training in accordance with the capacities of their children; and to provide for their participation in community life.

Thus, while Congress has not spoken definitively, concerning its viewpoint of the effect of maximum grants on the purposes of the Social Security Act, statements contained in the Congressional Reports and testimony at Congressional hearing, as well as the administrative interpretation in the Handbook, certainly support the conclusion that accomplishment of the primary purpose of aid under Title IV, the "strengthening of family life through services and financial aid," can only be met adequately by meeting all needs of all individuals in all families, whether they be large or small families. Nowhere in the Social Security Act and its various amendments or in the Handbook, is there any justification for a discrimination between large and small families. The maximum grant regulation here in question defeats the very purposes of the Social Security Act, "to encourage the care of dependent children in their own homes" by establishment of such a regulation.

In the very recent case of *King v. Smith*, No. 949, October term, 1967, 36 L.W. 4703, the Supreme Court opinion includes extensive research on the Social Security Act, insofar as it touched upon the Alabama welfare regulation dealing with the so-called "substitute father."

While the regulation there is not related to the maximum grant regulation here under attack, there was a recognition of the importance of the legislative purposes of the act as further interpreted by the Handbook, which is frequently cited. There, as in this case, the Supreme Court found that "* * * the regulation itself is unrelated to need, because the actual financial situation of the family is irrelevant in determining the existence of a substitute father." 36 L.W. 4706.

The Court went on to state, at 36 L.W. 4709:

> "A contrary view would require us to assume that Congress, at the same time that it intended to provide programs for the economic security and protection of *all* children, also intended arbitrarily to leave one class of destitute children entirely without meaningful protection. Children who are told, as Alabama has told these appellees, to look for their food to a man who is not in the least obliged to support them are without meaningful protection. Such an interpretation of congressional intent would be most unreasonable, and we decline to adopt it." (Court's emphasis).

The Court concluded that the purpose of the AFDC program was to provide economic security and services to needy children who lost the support of a "breadwinner". Parents of a large family are required to completely ignore children beyond the sixth individual in a family, which is humanly inconceivable, or to spread already inadequate resources thinner. The effect of the maximum grant regulation, as in the *King v. Smith* case, is to arbitrarily leave one class of destitute children entirely without meaningful protection, and is equally unreasonable in view of the purposes of the Act.

### II. *Supplemental Argument That the Maximum Grant Provision of Rule 200 VII 1. Violates the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States.*

Plaintiffs contend that there is enough evidence on Congressional intent and administrative interpretation to war-

rant a finding by the Court that Rule 200 VII 1. violates Section 601, 42 U.S.C. the Federal Social Security Act, and is the very antithesis of the purposes of the Act. However, even if the Court should not reach this conclusion, the regulation in question must still fall, as a clear violation of plaintiffs' constitutional rights under the equal protection and due process clauses of the Fourteenth Amendment to the United States Constitution.

Plaintiffs have already filed an extensive memorandum in support of their argument on this point. By way of further supplementation of that memorandum, plaintiffs maintain that the application of the maximum grant to children of large families is a denial of equal benefits to them. "* * * on a wholly arbitrary standard or on a consideration that offends the dictates of reason." *Schwarg v. Bd. of Bar Examiners*, 358 U.S. 232, 249 (Frankfurter, J., concurring). The children of the plaintiffs and all children of families belonging to the class here represented are thus denied rights on the basis of a status which they are powerless to influence, i.e., that they are members of a family of more than six persons.

The very recent case of *Anderson, et al. v. Schaefer*, Civil Action No. 10443, (D.C. N.D. Ga. April 4, 1968) is close on the point to the instant case. For the Court's convenience a copy of the opinion and order, findings of fact and conclusions of law are attached hereto. In that case, the state of Georgia promulgated an "employable mother" regulation which discriminated between AFDC recipients in the calculation of their grants on the basis of the sources of their income. Thus, under the regulation a family whose income resulted from employment would in most cases receive less in AFDC supplementary benefits than a person whose income came from other sources.

The Court in *Anderson*, found that the regulation bore "* * * no reasonable relationship to plaintiffs' financial needs, and *therefore to the purposes of the Social Security Act* * * *". (emphasis supplied). We would submit that the regulation here challenged bears even less reasonable a relationship to the plaintiffs' needs, arbitrarily discrmi-

nating against the child or children of a large family. The members of the Gary family receive assistance at the rate of $25.00 per person although according to Maryland's minimal standards of subsistence and shelter they should receive assistance at the rate of $33.15 per person. Likewise, the members of the Williams' family receive assistance at the rate of $27.78 although minimal subsistence standards calculated for them by the defendant call for payments of $35.71 per person. A family of six persons, unhampered by the maximum grant regulation receives assistance at the rate of $38.50 per person, the full amount calculated to be their minimal subsistence needs.

Thus, as in the *Anderson* case, the maximum grant regulation penalizes the plaintiffs on a basis which "bears no reasonable relationship to their financial needs and therefore to the purposes of the Social Security Act." *Anderson v. Schaefer, supra.*

The Court in *Anderson* held that the defendants shall not give any force or effect to the regulation in question. It is respectfully submitted that the court should likewise enjoin any enforcement of the maximum grant regulation herein under attack.

(Signatures and Certificate of Service.)

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*United States District Court for the District of Maryland*

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## AMENDED MOTION TO DISMISS

Now come the Defendants Edmund P. Dandridge, Jr., Chairman of the State Board of Public Welfare; Raleigh C. Hobson, Director of the State Department of Public Welfare; and Mrs. Barbara Stevenson, Howard W. Murphy, Julius O. Shuger, Dr. W. Richard Ferguson, Lester B. Levy, Nicholas C. Mueller, Calhoun Bond and Mrs. Charles D. Harris, members of the State Board of Public Welfare, by Francis B. Burch, Attorney General, and Frank A. DeCosta, Jr., Assistant Attorney General, their attorneys, and by

way of an Amended Motion to Dismiss, by leave of this Court, respectfully say:

1. That this Court is without jurisdiction by reason of the Eleventh Amendment to the United States Constitution because the Plaintiffs, residents of the State of Maryland, assert a monetary claim against the State of Maryland to which it has not consented.

2. That the Governor of the State of Maryland and/or the President of the Maryland Senate and the Speaker of the House of Delegates are indispensable party defendants under Rule 19 (a) and (b) of the Federal Rules of Civil Procedure and their joinder will divest this Court of jurisdiction.

3. That this Court should abstain from exercising jurisdiction because on the face of the Complaint there is alleged to be a State statute susceptible of construction by the State courts which would avoid or modify the constitutional question raised.

4. That the Complaint does not raise a substantial constitutional question nor state a claim upon which relief can be granted, because "poor relief" is a State question and there is no constitutional right thereto.

Wherefore, Defendants request that an Order be entered dismissing the Complaint in accordance herewith.

(Signatures and Certificate of Service.)

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*United States District Court for the District of Maryland*

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## MEMORANDUM OF LAW IN SUPPORT OF DEFENDANTS' AMENDED MOTION TO DISMISS

### ARGUMENT

### I.

### *Eleventh Amendment*

The Plaintiffs do not merely contend that the Maryland Department of Public Welfare's maximum grant regulation

(Maryland Manual of the Department of Public Welfare, Part II, Rule 200, Section VII 1) of $250 is violative of the State and Federal Enabling Acts [Article 88A, Sections 44A and 49, Annotated Code of Maryland (1964 Replacement Volume), and 42 U.S.C., Sections 601, *et seq.*] and the equal protection and due process clauses of the Fourteenth Amendment to the United States Constitution, but they additionally contend that the Williams family (Plaintiffs herein) is entitled to an additional $46.15 more per month in AFDC benefits from the State (Paragraph IX A of the Complaint) and that the Gary family (Plaintiffs herein) is entitled to an additional $81.50 per month in AFDC benefits from the State (Paragraph IX B of the Complaint).

That the Plaintiffs are really seeking a monetary judgment against the State becomes even clearer from the nature of the specific relief requested. They request a preliminary and permanent injunction:

> "(a) prohibiting, restraining and enjoining defendants . . . from enforcing, applying or implementing said maximum grant regulations".

Obviously, if the State may not apply its $250 maximum grant regulation, the next step becomes obvious:

> "(b) prohibiting payments of assistance which are less than the minimum subsistence and shelter needs as established by the Maryland Board of Public Welfare, and ordering and requiring defendants to make welfare payments to plaintiffs . . . in accordance with minimum subsistence and shelter needs as established by the Maryland State Board of Public Welfare".

In the case of the Williams family this would amount to an affirmative award of $46.15, and in the case of the Gary family this would amount to an affirmative award of $81.50. Not content to rest with (a) and (b), Plaintiffs further clarify the true nature of their monetary claim by requesting this Court to

> (c) order and require "defendants . . . to furnish AFDC assistance to Plaintiffs and others similarly

situated without regard to said maximum grant regulations".

The essence of the Plaintiffs' claim, then, is that they are entitled to monetary relief against a State by virtue of the equal protection and due process clauses of the Fourteenth Amendment to the United States Constitution.*

The Eleventh Amendment to the United States Constitution provides:

> "The Judicial power to the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State."

In *Hans v. Louisiana*, 134 U.S. 1 (1890), the Supreme Court construed the Eleventh Amendment to prohibit suits in federal courts against a state for a monetary judgment by one of the state's own citizens unless the state itself consents. This constitutional doctrine has been reaffirmed since *Hans*. *Great Northern Life Insurance Co. v. Read*, 322 U.S. 47, 51-52 (1944).

The present claim for monetary relief may not, by virtue of the Eleventh Amendment, be maintained in this Court since it is one to which the judicial power of the United States shall not extend.

## II.

### *Joinder of Indispensable Parties*

The Plaintiffs in this class action are essentially asking that the State provide additional money in the budget of the Maryland State Department of Public Welfare for increased grants under AFDC. That will be the ultimate

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* More alarmingly, their assertion, when cut to the "bare bones", is that they are entitled to "poor relief" as a matter of "right" by virtue of the same constitutional provision.

effect, if grants beyond the $250 maximum are constitutionally required.*

Under Article III, Section 52(3) of the Maryland Constitution, the Governor is charged with the ultimate responsibility for the preparation of the budget of the State Department of Public Welfare. The Governor may reduce or exclude from his budget an appropriation requested by one of his executive departments. Moreover, the General Assembly may only reduce executive appropriations included in the budget as submitted. However, the General Assembly may appropriate additional moneys by way of a Supplementary Appropriation Bill, provided that a revenue source by way of a tax is established to support the Supplementary Appropriation Bill. Maryland Constitution, Article III, Section 52(8).

Further, the State Department of Public Welfare does not have the authority, within its fiscal year 1968 or 1969 budget, to transfer funds from one program [i.e., Aid to the Blind (AB), Old Age Assistance (OAA), or Aid to the Permanently and Totally Disabled (APTD)] to AFDC, in the absence of a legislative amendment, without obtaining the approval of the Governor. Article 15A, Section 8 of the Maryland Code (1968 Replacement Volume), in pertinent subsections, provides:

> "(a) *What constitutes initial plan of disbursement.*—The items and amounts making up the appropriation in any budget bill, supplementary appropriation bill or bond issue shall represent the initial plan of disbursement and apportionment of the appropriations of which they are part. Each appropriation shall be paid out only in accordance with the schedule therefor, unless such schedule be amended, within the limits of such appropriation, in the following manner: . . ."
>
> * * * * * *

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*The Department estimates that there are approximately 2,300 grants which would have to be increased if this class action prevails, requiring increased grants for AFDC of $957,600, neither appropriated in the present 1968 fiscal year budget nor appropriated in the 1969 fiscal year budget.

"(e) *Amended schedules submitted by departments, etc., and approved by Governor; amendments made or approved by Governor to be reported to General Assembly.* — Any department, board, commission, officer or institution may, at any time submit in writing to the Governor an amended schedule for the disbursement and apportionment of the appropriations made to it by him. If the Governor shall approve such amended schedule, he shall transmit the same, with the certificate of approval, to the Comptroller and thereafter, such appropriation shall be paid out in accordance with said amended schedule, subject to the provisions of subsection (f). Any such amended schedule so submitted to the Governor may be withdrawn at any time before the Governor has acted thereon. Any amended schedule approved by the Governor may be again amended at any time in like manner and with like effect. All amendments and schedules made or approved by the Governor shall be reported by him to the next session of the General Assembly."

In order to achieve the fiscal scheme contemplated by the Plaintiffs, namely, increasing the AFDC grants by $957,600, the Governor and/or the President of the Maryland Senate and the Speaker of the House of Delegates are indispensable parties.

Rule 19(a) of the Federal Rules of Civil Procedure, in pertinent part, provides:

"A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party if (1) in his absence complete relief cannot be accorded among those already parties . . . If he has not been so joined, the court shall order that he be made a party."

Rule 19(b) of the Federal Rules of Civil Procedure provides:

"If a person as described in subdivision (a) (1) (2) hereof cannot be made a party, the court shall de-

termine whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed, the absent person being thus regarded as indispensable. The factors to be considered by the court include: first, to what extent a judgment rendered in the person's absence might be prejudicial to him or those already parties; second, the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided; third, whether a judgment rendered in the person's absence will be adequate; fourth, whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder."

Rule 19(a) is satisfied because, in the absence of the Governor and/or the President of the Maryland Senate and the Speaker of the House of Delegates being made a party, "complete relief cannot be accorded among those already parties". Rule 19(b) is satisfied because each is a State official charged with statutory responsibilities which would be affected by this action and the relief prayed by the Plaintiffs. These State officials are, therefore, "indispensable" parties within the meaning of Rule 19 (a) and (b).

Since the Plaintiffs' action would be essentially asking for monetary relief against these State officials, an increase in the AFDC grants beyond the present $250 maximum, their joinder could divest this Court of jurisdiction because of the Eleventh Amendment as construed in *Hans v. Louisiana, supra,* and *Great Northern Life Insurance Co. v. Read, supra.*

These additional defendants are, therefore, "indispensable" parties whose joinder would divest this Court of jurisdiction and (1) any judgment rendered in the absence of these parties will be prejudicial to them; (2) in shaping relief, a monetary award to the Plaintiffs against the State will necessarily result; (3) in the absence of the additional defendants, relief will not be adequate because of the fiscal scheme established by State law; and (4) the Maryland courts have jurisdiction to entertain the Plaintiffs'

action. These factors being present, Rule 19(b) authorizes this Court to dismiss the Complaint under these circumstances.

III.

*Abstention*

The Complaint states:

> "This is a proceeding for injunction enjoining the defendants from continuing to enforce or otherwise apply its 'maximum grant' regulation. This is also a proceeding for a declaratory judgment that defendants' 'maximum grant' regulation:
>
> (A) Contravenes the equal protection and due process clauses of the Fourteenth Amendment to the Constitution of the United States; and
>
> (B) Is contrary to the purposes of the federal and state Aid to Families with Dependent Children program as expressed by the Federal Social Security Act (42 U.S.C. Sections 601 et seq.) and the statutes of the State of Maryland (Article 88A, Sections 44A and 49, Ann. Code of Md., 1957 ed.)."

On the face of the Complaint the Plaintiffs allege the narrowly limited "special circumstance" which permits this Court to decline to exercise jurisdiction, namely, that the "maximum grant" regulation promulgated by the Maryland State Board of Public Welfare "[i]s contrary . . . to the statutes of the State of Maryland".

In *Harrison v. NAACP*, 360 U.S. 167 (1959), the Supreme Court, in approving the District Court's declension of jurisdiction, held that abstention is properly exercised when a state statute is susceptible to a construction by the state courts that would avoid or modify the constitutional question. This principle has been recently reaffirmed by the Supreme Court in *Zwicker v. Koota*, 36 L.W. 4041, 4043 (1967), although abstention was held to have been improperly applied in that case because it was conceded there that a construction of the state statute would not render unnecessary a decision of the constitutional chal-

lenge. In the present case, however, the Plaintiffs themselves assert that the "maximum grant" is inconsistent with a state statute. If this is true, as the Plaintiffs claim, such a construction would avoid the constitutional question. Regard for the interest and sovereignty of the state and reluctance needlessly to adjudicate constitutional issues are appropriate considerations by a federal District Court in the ultimate determination of whether to exercise jurisdiction, where the *Harrison* "special circumstance" is present. In this connection, it is interesting to note that recently in *King v. Smith*, 36 L.W. 4703 (1968), the Supreme Court struck down Alabama's "substitute father" regulation which denied AFDC benefits on statutory rather than the asserted constitutional grounds.

Moreover, there is every danger that a federal decision on the merits of the constitutional claim will disrupt an entire regulatory scheme, not only in Maryland where appropriations were made for both the fiscal year budgets 1968 and 1969 with the $250 "maximum grant" regulation for AFDC in mind but also by implication in one-third of all states participating in AFDC *categorical assistance* programs under the Social Security Act. One-third of all states fix the maximum amount of grants to families with dependent children.* The Supreme Court has observed without disapproval that:

> "The level of benefits is within the State's discretion, but the Federal Government's contribution is a varying percentage of the total AFDC expenditures within each State [citations omitted]. The benefit levels vary greatly from state to state. For example, in May, 1967, the average payment to a family under AFDC was about $224 in New Jersey, $221 in New York, $39 in Mississippi, $20 in Puerto Rico, and $53 in Alabama [citations omitted]." *King v. Smith*, 36 L.W. 4703, 4706 (1968).

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* See Sparer, *Social Welfare Law Testing*, 12 Prac. Law 13, 21 (1966). In Georgia the maximum grants in AFDC are $36 for the first child, $27 for each additional child up to and not to exceed $144 per family per month. Ga. Manual of Public Assistance, Part III, Section VII, at G-37 (1966).

The "special circumstances" doctrine of *Harrison* has not been tampered with in *Damico v. California*, 389 U.S. 416 (1967). In *Damico* the question presented was whether a three-judge court properly declined to exercise jurisdiction to hear a Section 1983 claim upon the doctrine of abstention because the plaintiff had failed to exhaust state administrative remedies. No such ground is asserted in the present case.

Finally, the doctrine of abstention is properly raised by a Motion to Dismiss (compare *Government & Civic Employees Organizing Committee, CIO v. Windsor*, 353 U.S. 364; *Shipman v. DuPre*, 339 U.S. 321, with *Stainback v. Mo Hock Ke Lok Po*, 336 U.S. 368) although it may be the better practice to retain jurisdiction pending adjudication in the state court. See Note, "Federal Question Abstention: Justice Frankfurter's Doctrine in an Activist Era", 80 Harv. L. Rev. 604 (1967).

## IV.

*"Poor Relief" is a state question and there is no constitutional right to a level of benefits beyond that provided by the states.*

Public welfare takes the forms of *general assistance* and *categorical assistance* in the United States. General assistance is financed by local and state governments. Although programs of this sort provided the only public aid available prior to the Depression, the now furnish only a small portion of public welfare funds. Categorical assistance is today the predominant form of public welfare. Under this scheme, state programs which are supported by grants-in-aid from the federal government pursuant to the Social Security Act administer aid to specific categories of needy individuals and families. The federal statute recognizes four major categories: Old Age Assistance (OAA), Aid to the Blind (AB), Aid to the Permanently and Totally Disabled (APTD), and Aid to Families with Dependent Children (AFDC).

State participation is not required by the federal statute. States may choose not to apply for federal assistance or

may join in some, but not all, of the programs. In order to receive federal funds, however, state plans must be submitted for the approval of the Secretary of Health, Education and Welfare. Although the establishment of criteria for need and other factors of eligibility is left largely to the states, the plans must meet certain basic qualifications under the act and must conform to the rules and regulations promulgated by the Secretary.

The state plans themselves are usually devised pursuant to general enabling legislation empowering a state agency to promulgate rules and regulations for administering the federal program. The Maryland AFDC program is legislatively authorized and detailed in Article 88A, Sections 44A, *et seq.*, Annotated Code of Maryland (1964 Replacement Volume).

Maryland, together with every other state, Puerto Rico, the Virgin Islands, the District of Columbia and Guam, participates in the Federal Government's AFDC program, which was established by the Social Security Act of 1935. *King v. Smith*, 36 L.W. 4703 (1968). The category singled out for welfare assistance by AFDC is the "dependent child", who is defined in Section 406 of the Act, 49 Stat. 629 (1935), as amended, 42 U.S.C. Section 606(a), as an age-qualified "needy child . . . who has been deprived of parental support or care by reason of the death, continued absence from the home, or physical or mental incapacity of a parent, and who is living with" any one of several listed relatives.

The Maryland State Department of Public Welfare, with respect to AFDC grants, promulgated the following regulation:

> "The amount of the grant is the resulting amount of need when resources are deducted from requirements as set forth in this Rule, subject to a maximum on each grant from each category:
>
> A. For local departments under any 'Plan A' of Shelter Schedule B $250. For local departments under any 'Plan B' of Shelter Schedule B $250, except that:

a. If the requirements of a child over 18 are included to enable him to complete high school or training for employment (III-3, C), the grant may exceed the minimum by the amount of such child's needs.

b. If the resource of support is paid as a refund (V-2, F), the grant may exceed the maximum by an amount of such refund. This makes consistent the principle that the amount from public assistance funds does not exceed the maximum.

B. A grant is subject to any limitation established by existing rule on insufficient funds." Maryland Manual of Department of Public Welfare, Part II, Rule 200, Section VII.

The Department has established schedules by which they determine the actual needs of a particular family under AFDC based upon standards established by the Department. When those standards are applied to the Plaintiffs, the Williams family, the schedules show that they "need" $296.15. When those standards are applied to the Plaintiffs, the Gary family, the schedules show that they "need" $331.50. However, in each case the "maximum grant" regulation, set out above, only authorizes a grant of $250.

The Plaintiffs contend that because of this effect the "maximum grant" regulation is an impermissible statewide regulation under the equal protection and due process clauses of the Fourteenth Amendment to the United States Constitution and inconsistent with both the State and Federal enabling statutes.

Among other hardships wrought by the "maximum grant" regulation, the Plaintiffs assert that the $250 limitation destroys family unity and establishes an unrealistic standard of living inconsistent with the Department's own notions of what is "needed". Plaintiffs apparently ignore the very practical reason for the limitation, namely, that it is a legitimate way of allocating the State's limited resources available for AFDC assistance.

In another context, with respect to recoveries by AFDC recipients, a federal court has observed:

". . . The plain flaw that nonetheless destroys plaintiffs' thesis is that it is brought to the wrong forum. Plaintiffs' complaints might move us to vote for changes if we sat as state legislators. But they do not approach the showing of irrationality or arbitrariness warranting exercise of the limited veto power of the federal judiciary under the Fourteenth Amendment.

"Against plaintiffs' views, as defendants point out, there are arguments of policy which can scarcely be dismissed as frivolous, whether or not we would find them convincing if the judgments of policy were for us. The State is entitled, they note, to consider relative need and available resources in distributing its limited welfare funds." *Snell v. Wayman*, 281 F. Supp. 853, 862 (D.C. S.D., N.Y., 1968).

* * * * * *

"We sketch these countervailing points for the single purpose of indicating what seems plain to us — that we could hold the statutes unconstitutional only if we were invested by the 'convenient vagueness' of the Due Process Clause with a power, long since denied us, to invalidate state laws 'because they may be unwise, improvident, or out of harmony with a particular school of thought'." (Citations omitted.)

"To be sure, cases like those just cited reflect mainly the recognition of our highest Court during the last thirty years or so that it does not sit as final arbiter of state social policies affecting matters of business and industrial regulation. . . ." *Id.*

* * * * * *

"And, it is said, the subject welfare administration, where the primitive needs of desperate people are at stake, is altogether different. There is a difference, certainly, but not a constitutional one — not any that commissions us to tell those the people elect how they

should resolve competing values of the kind here in question.

"It is appropriate from time to time to appreciate the full measure and continued vitality of what Mr. Justice Holmes meant when he said: 'The 14th Amendment does not enact Mr. Herbert Spencer's Social Statics.' Lochner v. State of New York, 198 U.S. 45, 75, 25 S. Ct. 539, 546, 49 L. Ed. 937 (1905) (dissenting). Now that his dissenting thought has won the day, we ought not to trivialize the achievement by viewing it only as the interment of Spencer's social doctrines. The principle applies to the social philosophers that most of us, including judges, find more persuasive than Spencer. If we were free to enforce what we may modestly deem our more enlightened view, we might seriously consider the changes plaintiffs propose. But we have no such power, and it is better in the end for everyone that this is so.

"We were reminded only the other day, though the context was different, of the basic principle: 'The purpose of the Constitution and the Bill of Rights, unlike more recent models promoting a welfare state, was to take government off the backs of people.' *Schneider v. Smith*, 309 U.S. 17, 25, 88 S. Ct. 682, 19 L. Ed. 2d 799 (1968). The principle counsels that it is not for federal judges to be 'liberal' or 'conservative' in advancing and ordering measures which undoubtedly relate to basic matters of human decency and welfare. The constricted test in this forum is one of minimal rationality. By that test plaintiffs' due process argument must fail." *Id.* at 863.

* * * * * *

"Like the life of the law generally, the Fourteenth Amendment was not designed as an exercise in logic. It is ancient learning by now that a classification meets the equal protection test 'if it is practical, and is not reviewable unless palpably arbitrary'. Orient Insurance Co. v. Daggs, 172 U.S. 557, 562, 19 S. Ct. 281, 282, 48 L. Ed. 552 (1869). If the classification has 'some

reasonable basis', it cannot be held offensive to the Equal Protection Clause 'because it is not made with mathematical nicety or because in practice it results in some inequality.' Lindsley v. Natural Carbonic Gas Co., 220 U.S. 61, 78, 31 S. Ct. 337, 340, 55 L. Ed. 369 (1911). 'The problems of government are practical ones and may justify, if they do not require, rough accommodations — illogical, it may be, and unscientific.' Metropolis Theatre Co. v. City of Chicago, 228 U.S. 61, 69-70, 33 S. Ct. 441, 443, 57 L. Ed. 730 (1913)." *Id.* at 865.

The Supreme Court, considering categorical assistance programs under AFDC among the states, has observed:

". . . There is no question that States have considerable latitude in allocating their AFDC resources, since each State is free to set its own standard of need and to determine the level of benefits by the amount of funds it devotes to the program." *King v. Smith*, 36 L.W. 4703, 4706 (1968).

The Supreme Court further noted that:

"HEW's Handbook, in Pt. IV, § 3120, provides that: 'A needy individual . . . [under AFDC] is one who does not have income and resources sufficient to assure economic security, *the standard of which must be defined by each State.* The act recognizes that *the standard so defined depends upon the conditions existing in each State.*' (Emphasis added.) The legislative history of the Act also makes clear that the States have power to determine who is 'needy' for purposes of AFDC. Thus the Reports of the House Ways and Means Committee and Senate Finance Committee make clear that the States are free to impose eligibility requirements as to 'means'. H. R. Rep. No. 615, 74th Cong., 1st Sess., 24 (1935); S. Rep. No. 628, 74th Cong., 1st Sess., 36 (1935). The floor debates corroborate that this was Congress' intent. For example, Representative Vinson explained that 'need is to be determined under the State law.' 79 Cong. Rec. 5471 (1935)." *Id.* at 4706.

For these reasons the constitutional question is insubstantial and does not state a claim for which relief can be granted.

CONCLUSION

For the reasons set out above, together or alternatively, the Complaint should be dismissed.

(Signatures and Certificate of Service.)

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*United States District Court for the District of Maryland*

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ANSWER

Now come Edmund P. Dandridge, Jr., Chairman of the State Board of Public Welfare; Raleigh C. Hobson, Director of the State Department of Public Welfare; and Mrs. Barbara Stevenson, Howard W. Murphy, Julius O. Shuger, Dr. W. Richard Ferguson, Lester S. Levy, Nicholas C. Mueller, Calhoun Bond and Mrs. Charles B. Harris, members of the State Board of Public Welfare, by Francis B. Burch, Attorney General and Frank A. DeCosta, Jr., Assistant Attorney General, their attorneys, and for answer to the Complaint filed herein respectfully say:

First Defense

The Complaint fails to state a claim against the Defendants upon which relief can be granted.

Second Defense

Poor relief is a state not a federal question.

Third Defense

1. The Defendants admit the allegations contained in the first and second paragraphs of Section I of the Complaint and in Sections III, IV, V, VII and X thereof.

2. The Defendants deny the allegations contained in Sections II, VI, VIII, IX, XI, XII, XIII and XIV of said Complaint.

Wherefore, having fully answered said Complaint, Defendants pray that the same be dismissed.

(Signatures and Certificate of Service.)

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*United States District Court for the District of Maryland*

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## STIPULATION OF FACTS

Come Now the Plaintiffs and Defendants by their undersigned attorneys and respectfully submit to the Court stipulations of fact which are intended to narrow the issues and save time of the Court.

Other than as admitted in the pleadings or as such admissions may be changed from the pleadings, the parties respectfully show to the Court the following agreement as to facts and issues:

1. But for the maximum grant provision of Rule 200, Section VII 1 of the Maryland Manual of the Department of Public Welfare, Part II, the schedules for determining the cost of subsistence needs issued by the Maryland State Department of Public Welfare (attached to the Complaint as Exhibits $B^1$, $B^8$) would entitle Plaintiff Linda Williams and her eight (8) children to receive a grant of $311.15 per month and entitle the Gary family to receive $331.50 per month. (Attached hereto in the *Computation of the Amount of the Grant* as Stipulation Exhibits 1 and 2). The maximum grant provision of $250 per month is less than the minimum subsistence needs of Plaintiffs Linda Williams' family and the Gary family when computed according to the above schedules of the Maryland State Department of Public Welfare. The maximum grant provision is less than the minimum subsistence needs of any eligible AFDC family unit consisting of seven persons or more,

since their minimum needs when computed by the same schedules exceed the maximum payment of $250 per month. The larger the eligible family the greater the disparity between the maximum grant and the minimum subsistence needs.

2. Linda Williams, one of the Plaintiff's is the 33 year old mother of eight children, ages 16, 14, 11, 10, 9, 7, 6 and 4 years old. She is now living at 928 East Eager Street, Baltimore, Maryland in a six-room house, containing three bedrooms.

The Plaintiff, Linda Williams is paying $69.00 a month rent, and in addition to this rent, she must also supply her home with coal heat.

The Plaintiff, Linda Williams, has been on welfare (AFDC) ever since her husband, William Williams, left her soon after their youngest child, Wanda, was born, more than three years ago.

Since her husband left, Linda Williams has had no means of support other than the $250.00 which she receives monthly from the Department of Public Welfare. Because there are no relatives to assist her with the care of her children, it is necessary that she stay home with her children at all times to care for them. She is also not able to add to her welfare payments in any way because of a serious breast condition which she has, which has caused her to have about five operations.

After payment of her monthly rent, and the cost for heating her home with coal, she has less than $175 per month to feed and clothe her family, and to provide them with the other necessities of life. She is constantly forced to buy clothes and shoes for her children on credit, and she is already in serious debt. Most of her children need shoes right now, and they sometimes stay home from school, especially in the wintertime, because they do not have the necessary clothes to wear.

She is trying to keep all of her family together with her and to make up for the fact that their father is not at home with them. This is very hard for her to do because

of her continuing lack of money. If Mrs. Williams had enough money to pay for her family's needs, she could provide a better home life for her family.

She has begun buying food stamps which are some help but which still leave her with insufficient money for her other daily needs. Sometimes, she doesn't have enough money to buy the amount of stamps required to participate in the program. Unless she can get some financial help, she will have a difficult time supporting her family.

Junius Gary, is one of the Plaintiffs in this case. He is 38 years old and was married to Jeanette Gary in October, 1952, in Baltimore City. He is the father of eight children, ages 11, 10, 9, 8, 7, 6, 5 and 4 years old. He is now living at 1402 Ashland Avenue, Baltimore, Maryland, in a row house which he and his wife, Jeanette Gary rent for the sum of $75 a month. Besides paying this rent, he must also heat this home, and there is no central heating system. He must heat each room separately with gas space heaters all over the house. This is very expensive and makes his gas and electric bill very high, sometimes as high as $50 a month. He needs a large house to provide room for his eight children.

Mr. Gary has served two years in the United States Army, from 1953 until 1955, and was honorably discharged from the Army. After his active service was completed he began working as a truck driver and chauffeur, the kind of duties he had in the Army, but after an automobile accident, he was not able to keep up this work because of dizzy spells and blacking out spells. Because of this condition, he was not able to do work of any kind, and in about March, 1962, he began receiving AFDC assistance, since he had no other way of supporting his family. At the time he began receiving AFDC assistance, all of his eight children were already born, and since these benefits have begun, Mr. and Mrs. Gary have not had any more children. The Gary family receives the maximum grant of $250 per month from the Welfare Department.

After paying the monthly rent of $75 and the gas and electricity bill, Mr. Gary has less than $150 to feed and clothe his family and to provide them with all the other necessities for the month. All of his children are in school and are constantly in need of clothes and shoes and money for other kinds of supplies. His gas and electricity is sometimes shut off, because he is unable to pay the bill. He is forced to buy clothing and shoes for his children on credit and he is constantly in debt as a result. Most of his children need shoes and clothing now and sometimes they have to stay home from school.

Mr. Gary wants to keep his family together but he has a very difficult time getting along on the amount of money that he receives from the Department of Public Welfare. He does not have enough money to buy food stamps since he must buy $86 worth of food stamps in order to be a part of the food stamp program, and he does not have this much money left after all his other expenses are paid.

He has tried to earn extra money with other jobs, but he is not able to hold a job because of his physical condition. Unless he can receive some kind of financial help, besides the $250 a month, he will have a difficult time keeping his family together.

Jeanette Gary is the wife of Junius Gary and she has joined with him as Plaintiff in this case against the Welfare Department. She is 38 years old and has been married to Junius Gary since October, 1952. Her husband has tried to support the family but because of his physical condition he is unable to work. In 1962, the family applied for AFDC assistance since they had no other means of support. Mrs. Gary is in ill health and she has high blood pressure and arthritis in her arms and legs. She is being treated at Johns Hopkins clinic.

(Signatures omitted.)

## STIPULATION EXHIBIT NO. 1

Computation of the Amount of the Grant

Linda Williams and eight children

*Requirements* — monthly

| | |
|---|---|
| 1. Shelter | $ 45.00 |
| 2. Subsistence Need | 259.00 |
| 3. School Supplies ($.50 for 6th grade and under, $1.00 for 7th grade and over) | 4.50 |
| 4. Insurance | 2.65 |
| *Total Requirements* | $311.15 |
| *Resources* | 0 |
| *Requirements Less Resources* | $311.15 |
| *Amount of Grant* | $250.00 |

(subject to maximum grant of $250.00)

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## STIPULATION EXHIBIT NO. 2

Computation of the Amount of the Grant

Mr. & Mrs. Gary and eight children

*Requirements* — Monthly

| | |
|---|---|
| 1. Shelter | $ 45.00 |
| 2. Subsistence | 284.00 |
| 3. School Supplies ($.50 for 6th grade and under, $1.00 for 7th grade and over) | 2.50 |
| *Total Requirements* | $331.50 |
| *Resources* | 0 |
| *Requirements Less Resources* | $331.50 |
| *Amount of Grant* | $250.00 |

(subject to maximum of $250.00)

*United States District Court for the District of Maryland*

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(T. 1)

PROCEEDINGS IN OPEN COURT — 6-24-68

(T. 2) THOMAS SCHMIDT

DIRECT EXAMINATION

By Mr. DeCosta:

Q. Mr. Schmidt, your address, please? A. 704 Scarlet Drive, Towson, Maryland.

Q. And are you employed with the State Department of Public Welfare? A. Yes, sir.

Q. What is your position with the Department? A. Chief, Division of Fiscal and Statistical Management.

Q. How long have you been in that position? A. Two and one-half years.

* * * * * *

(T. 6) By Mr. DeCosta:

Q. How does the Department arrive at, quote, "need," end of quote, for its grants in AFDC? A. [Mr. Schmidt] Well, there are several bases, based on the item of expenditure or the item of need. For instance, in determining the need for food, the Department uses the Department of Agriculture — what's called low-cost food allowance, and we determine a need for food based on that for a family of certain size — various other elements, rent.

When we determine rent, there is a study made, and then we try to determine what the rental cost is for the people on welfare, what they are actually expending for rent.

So there are various ways in which the needs are determined.

(T. 7) Q. All right, and this foundation is used to arrive at your schedules which you apply to each applicant? A.

This foundation is used to arrive at the schedules but there is the point of the schedule that we arrive at, may not be approved through the budgetary process.

Q. I understand. In other words, it is conceivable that your schedule could be in excess of your budgetary ability? A. That's correct.

Q. And that to the extent that there is an excess, you must, because of your appropriation, disregard your higher standards as set by the Department? A. The higher request.

Q. The higher request, yes. All right. A. Yes, sir.

* * * * * *

(T. 8) A. [Mr. Schmidt] We requested that the 250 maximum and 240 maximum of the counties be eliminated.

Q. [Mr. DeCosta] All right. In other words, this was $1,300,000 in excess of your budgetary needs if the maximum were to be applied? A. That is correct.

Q. And was that included in the Governor's budget or not? A. That was disallowed in the Governor's budget.

Q. So that the Governor's budget went to the General Assembly for fiscal year '69 with the disallowance of $1,300,000; is that correct? A. Yes, sir.

Q. Now, within your fiscal year 1968 budget, if there were no 250 maximum, how much money in your present budget, considering your deficit at which you are now running, is available in terms of percentage figures for you to apply to each grant? A. If you are taking AFDC alone as a single budgetary item—

Q. Alone. A. —there is an elimination of a maximum for a (T. 9) year — would mean in effect that we would run a 4.2 million deficit, or approximately 25 per cent of the total general fund appropriation.

Q. And in order to absorb that deficit, how much in terms of percentage figures would you be able to give to each— A. Assuming—

Q. —element? A. Assuming funds weren't available from other sources, this would mean approximately we would have to reduce grant 25 per cent in AFDC across the board.

Q. Now, are you including in this 25 per cent reduction the number of family units that have been cut off and the amounts of monies cut off by reason of $250.00 maximum? A. Yes.

Q. And how many family units would that be? A. Approximately 2300.

* * * * * *

(T. 11) (Mr. DeCosta) Your Honor, I think his 75 per cent includes the $4 million present deficit; and he has not given us the figure yet, excluding the deficit they are running at; is that correct?

(The Witness) [Mr. Schmidt] The 25 per cent figure included the 3.2 million deficit plus the 957 increase in cost, based on the elimination of the maximum.

(Judge Thomsen) The deficit in what you expect (T. 12) to have next year anyway, in AFDC—

(The Witness) That is our present deficit this year.

By Mr. DeCosta:

Q. That is 1968 fiscal deficit? A. Yes, sir.

(Judge Thomsen) The 1968 deficit. Well now, did they give you enough money to eliminate that?

(The Witness) We hope to be able to get approval from the Governor to transfer funds between the various programs in the agency in which we are not experiencing a deficit, to cover this 3.2 million deficits in AFDC.

(Judge Thomsen) You mean for next year, to pay this year?

(The Witness) For this year.

(Judge Thomsen) Then next year what is going to happen?

(The Witness) We are projecting that we are going to be running a deficit in AFDC next year. Our present projection is somewhat above $3 million.

(Judge Winter) But again, for next year do you project that you will have unexpended funds in other aid programs that could conceivably be transferred to meet this deficit?

(T. 13) (The Witness) Next year we are anticipating an overall deficit in the agency.

By Mr. DeCosta:

Q. Now, what is your present surplus, overall surplus available in the agency? A. Combining all programs, we are estimating that we'll have a surplus of $274,000 at the end of this year.

Q. And what is your present surplus without regard to the end of the year? A. Well,—

Q. Quarter of a million dollars? A. Well, I can't estimate what the surplus is today but I make my projections on a yearly basis, an annual basis. I don't break them down by month.

Q. So what is your testimony with regard to the present overall surplus for the fiscal year '68? A. $274,000 approximately.

(Judge Thomsen) But even so, I don't understand it. The total appropriation is $42 million for AFDC. Why would an increase of $957,000, or $1 million, let's say, (it looks like one out of 42) why would it increase it 25 per cent? Why would it mean a reduction of 25 per cent across the board?

(T. 14) (The Witness) Well, that is the second part of the question. We are now talking about state funds, general funds, and out of that 40 — approximately $42 million, the general fund expenditure, the funds the state puts up, is $16,551,000. So in effect, all of these additional expenditures since the State of Maryland is above the federal matching maximum, all additional expenditures are state expenditures.

(Judge Thomsen) You say the state puts up 16 million?

(The Witness) The state puts up 16 million, yes, sir.

(Mr. DeCosta) Out of the 42. The rest comes from the federal government. Peanuts from the local.

(The Witness) Yes, sir.

* * * * * *

(T. 17) A. [Mr. Schmidt] Twenty-two dollars per recipient. They match on the basis of $32.00 state expenditures of which they pick up 22 and anything — and the state picks up the remainder $10.00. Anything above $32.00 average cost per recipient is borne entirely by the state.

Q. [Mr. DeCosta] And your state average cost per recipient, is presently what, $37.00 approximately— A. It's running close to $40.00 now.

Q. So that the federal government is at its maximum of $22.00 presently? A. That's correct.

* * * * * *

(T. 18) (Judge Thomsen) Well, if five or six children — let's assume it is six just to give us something other than the father and mother (that is eight people in the house), and you would get and give them 250 and you would be getting from the federal government, if there were six children in the unit, six times twenty-two; is that right?

(The Witness) [Mr. Schmidt] That's correct.

(Judge Thomsen) Now, suppose instead of there being six children in the unit, there were nine children in the unit; that would be three more chilren. Would the family still get $250.00?

(The Witness) Yes, sir.

(Judge Thomsen) Would you get six times 22 or nine times 22 from the federal government at this time?

(The Witness) We would receive a maximum total number of persons in the case, in this case nine children, for nine persons.

(Judge Thomsen) So that you were getting that now even though you have the maximum?

(The Witness) Yes, sir.

(Judge Thomsen) You get more from the federal (T. 19) government if there are nine children in the family than you would get when there are only six children in the family?

(The Witness) Yes, sir.

By Mr. DeCosta:

Q. Is it fair to say that the federal maximum is related to the individual whereas your state maximum is related to total assistance to family unit? A. That's correct.

Q. So that the record is clear on this: I gather your response to Judge Thomsen was that if you divide nine into your state maximum of 250, or ten, that would reduce your per-individual appropriation, wouldn't it? A. That's right. It would tend to reduce the average grant per recipient total case—

* * * * * *

(T. 21) (Judge Winter) All right, under the present progrom and under the present law, is there any difference in the amount of state funds paid to the family of six as compared to the family of nine children?

(The Witness) [Mr. Schmidt] Well, based on our matching, if we determine matching on individual cases, there would be. We would in effect be attaining a greater portion of federal matching for the family of nine than we would of six.

(Judge Winter) Well, I'm asking you now if in fact you are attaining a greater portion of matching in a family of nine children than a family of six?

(The Witness) I would have to say yes.

(Judge Winter) So it is fair to state, is it not, that the effect of the maxima is at least two-fold: First of all it

puts a limit on how much money can go out, and conserves state funds in that regard, does it not?

(The Witness) Yes, sir.

(Judge Winter) And it also has the effect, where the maximum amount is paid to a family of more children than the sum of which would add up to the maximum, of shifting a greater proportion of burden of those welfare payments to federal funds.

(The Witness) Yes, sir.

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CROSS EXAMINATION

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(T. 25) By Mr. Matera:

Q. Now, in making up the schedules in which you determine the amount of money that a family unit would be entitled to, who is eligible for welfare, you do determine (T. 26) the number of individuals in the family? A. [Mr. Schmidt] That is correct.

Q. And from that figure you determine how much each individual in that family is entitled to? A. Yes.

Q. So that in a family which is not affected by the maximum, each one of the individuals in that family would receive a computed amount of money in accordance with those schedules; isn't that correct? A. That's correct.

Q. So that the effect of a maximum then, once the family unit exceeds six individuals, is to reduce the amount per person that that family unit receives from the Department of Welfare? A. Once a crossover from the maximum is established, that is the effect of it.

(Judge Thomsen) Actually the amount has been sliding-scaled down for each additional child; isn't that correct; with one child per family you get more per child than for two, three or four. But it hits you double when you get to the maximum.

* * * * * *

(T. 27) By Mr. Matera:

Q. But in effect, Mr. Schmidt, what happens when the family unit exceeds six individuals is that the Department of welfare computes the amount of money the individuals over and above six should receive and yet cannot compensate those individuals because of the maximum grant regulation; isn't that true? A. [Mr. Schmidt] I believe the case worker does compute the total need and that then the 250 would be the maximum.

Q. So that in a family of more than six units, he does compute the total family need and then if that family need, as it will be, is above $250.00, the payment then that that family receives is $250.00. Isn't that so? (T. 28) A. Assuming that there are no resources available, I think that would be the case.

Q. So, in effect, even though the individual in a family of more than six units would be entitled to a greater amount per person than they actually received, they are cut off by the maximum regulation? A. Yes.

Q. Without the schedule, you would not be able to tell me what a family unit of nine should receive, can you? A. No. No, sir.

Q. But, in effect, each individual in that family would receive less than the Department of Welfare computes to be their minimal need because of their maximum grant regulation, isn't that so? A. That is correct.

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*United States District Court for the District of Maryland*

(T. 1)

PROCCEDINGS IN OPEN COURT — 6-25-68

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(T. 21) (Circuit Judge Winter) Yes, I think it is fair to state to you that at the conclusion of yesterday's proceedings we went into conference and we found ourselves in agreement on how there should be decided the points

which were advanced by the Defendants' amended motion to dismiss.

We had contemplated since the complaint was made that Mr. Matera wanted at least the summer and could not be prepared to proceed to submission of the case on the merits until the fall, the filing of a written opinion dealing with the various points at issue. It seems to us that in light of the discussion today that several results follow.

The first is that we would unduly delay the proceedings or unduly formalize the proceedings by preparing a formal written opinion at this time and

Secondly, that we would be of help to counsel in preparation of briefs and in determining the scope of the issues which we think are before us if we were to announce, at least in summary fashion, our conclusions resulting from yesterday's argument.

As we understand the argument that was advanced yesterday, the claim was made that the complaint should be dismissed because the relief sought was barred or prevented from being granted by this Court by the Eleventh Amendment to the Constitution; secondly, that we could not (T. 22) proceed to final judgment because of the absence of indispensable parties and that the suit ought to be dismissed at this stage for that reason.

Thirdly, we understood that there was an attack on the composition or the jurisdiction — using jurisdiction in the broad sense — of the Court in that there was not a substantial federal question presented to us by the pleadings and

Lastly, that the Court ought to abstain from deciding the alleged Constitutional questions, as well as the alleged question of repugnance between the Maryland regulation and the Federal Statute until such time as a court of the State of Maryland decided whether the Maryland regulation was in conflict with the Maryland statute.

We find some of these grounds to have some merit; others to have no merit. And we reach the conclusion that the motion to dismiss should be denied.

On the Eleventh Amendment point, we are of the view that the Eleventh Amendment would prohibit the granting of relief claimed in Prayer 2(b) of the Complaint. Prayer 2(b) when viewed in the light of the allegations, which are, of course, admitted to be true for this purpose by the amended motion to dismiss, would amount to the grant of (T. 23) a money judgment of forty-some dollars per month, as I recall, in favor of Mrs. Williams and a greater amount (the precise figure I do not recall) on behalf of the Plaintiffs Gary.

This we think the Eleventh Amendment absolutely prohibits since this aspect of the suit would in effect be a suit between a citizen of a state and the state, where the state has not consented to be sued; and we take judicial knowledge of the fact that Maryland has not consented to be sued.

This does not mean, however, that the suit is to be dismissed, because it is perfectly clear by established law laid down over a number of years that a suit against a state officer in his official capacity, alleging that in his official capacity he is administering or executing or promulgating or carrying into effect an invalid law or an invalid state-wide regulation, is not a suit such as is proscribed by the Eleventh Amendment. And to that extent, it would seem to us that the complaint is not barred and we could proceed to hear it and adjudicate it on the merits.

What I said about the Eleventh Amendment is the key to the contention that there is a lack of indispensable parties here. I think we all agree that if we had jurisdiction and the Eleventh Amendment did not prohibit us from (T. 24) granting the type of relief which is sought in Prayer 2(b), that it would be necessary for us to have one or more of the budgetary and appropriation officials of the state of Maryland as defendants before the Court before the Court could proceed to final judgment.

Since we have concluded that we could not give a money judgment or a form of decree which is tantamount to a money judgment in this case, it follows that because the parties before us, which are the officials of the state of

Maryland, and the only officials of the state of Maryland who have the duty to enforce and to apply the regulation, the validity of which is in question, are named as parties defendant, that all indispensable parties are before the Court; and the absence of an indispensable party is not established. So that on this ground, the Court too could proceed to final adjudication.

At this point, and particularly because the matter is about to be submitted to us, we will not dwell on our views on the substantiality of the Constitutional question except to say that at least so far as the equal-protection clause of the Fourteenth Amendment is concerned, we believe that the plaintiffs' contentions are not frivolous. This is not to say that we accept them or that we may not ultimately reject them but certainly this is not (T. 25) such an insubstantial or frivolous claim of denial of Constitutional rights that we feel in any sense that we would be justified at this point in dismissing the litigation out of hand.

On the abstention point, our views are that abstention is proper in speaking in the abstract in cases which have exceptional circumstances. We do not think that this is the type of case in which we ought to abstain. We reach this conclusion for a number of reasons.

The Plaintiffs' contention, as set forth in their complaint, that the Maryland regulation is repugnant to the Maryland statute is only one of three major contentions advanced, in addition to which jurisdiction of the Court is invoked under the Civil Rights Statute; and we have a very recent expression from the Supreme Court of the United States in King v. Smith, that where a suit is brought under the Civil Rights Statute, and where there appears to be a not insubstantial claim of denial of Federal Constitutional right, that it is proper for a Federal Court to go forward with an adjudication on the merits irrespective of whether a state court, by state construction of state law, at some later date might achieve the same result and make it unnecessary for the Federal Court to act.

(T. 26) In short, on the abstention point, we do not think that there are here the peculiar circumstances which

would cause us to abstain; and I think we note also in passing that even if we were to conclude to abstain, this would not mean that the suit would be dismissed. It would mean simply that the proceedings would be stayed until appropriate litigation could be instituted or brought to a conclusion in a state court which would determine the state issue. But the latter is academic because we concluded in this case that we should not abstain.

It is for those reasons that we will deny the motion to dismiss but, in denying the motion to dismiss, of necessity we are limiting the issue as to the nature of the relief which the plaintiffs are entitled to recover or receive.

Now, I might ask Judge Thomsen and then, in turn, Judge Harvey, if they have any additional or supplementary views that they would like to state on these various points.

(District Judge Thomsen) No, I concur.

(District Judge Harvey) I concur completely.

(Circuit Judge Winter) That being so, Mr. Matera, I think you would appreciate that we want your briefs limited to things that we think are live issues before us.

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*United States District Court for the District of Maryland*

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## INITIAL OPINION

WINTER, Circuit Judge:

Before us now[1] on the pleadings, stipulations and testimony are plaintiffs' prayers that we declare invalid and

[1] For the reasons stated in an oral opinion from the bench, we heretofore denied a motion to dismiss, based on various grounds. We also indicated that to the extent that the prayers of the complaint might be construed to require the Governor and General Assembly of Maryland to appropriate additional moneys to make larger payments to plaintiffs, such relief was barred by the Eleventh Amendment.

permanently enjoin the enforcement of the "maximum grant" regulation of the Maryland Department of Public Welfare which, summarized, provides that, irrespective of the need and eligibility, a family receiving benefits under the Aid to Families with Dependent Children Program (AFDC), established by the Social Security Act of 1935, as amended, 42 U.S.C.A. §§601-609, may not receive in excess of $250.00 per month. The declaration sought is that the "maximum grant" regulation is inconsistent with the Social Security Act and that it denies equal protection of the laws. Jurisdiction is properly invoked under Civil Rights Act, 28 U.S.C.A. §1343(3) and (4), and 42 U.S.C.A. §1983, and the case is an appropriate one for a three-judge District Court under 42 U.S.C.A. §2281. *King v. Smith*, 392 U.S. 309 (1968).

Maryland participates in AFDC. 8A Ann. Code of Maryland, Art. 88A, §§44A, *et seq.* By regulations approved by the Secretary of Health, Education and Welfare, Maryland has adopted a schedule setting forth standards of need. The schedule lists the monetary need for family units of one to ten persons, with decreasing additional amounts for each person over the original recipient but with a fixed additional amount for each person over ten persons. Maryland has also adopted a "maximum grant" regulation, Maryland Manual of the Department of Public Welfare, Part II, Rule 200, §VII, 1, which provides that, irrespective of the resulting figure after the resources of a family are deducted from its need as prescribed in the schedule, the maximum grant permitted under AFDC in Baltimore City is $250.00 per month.[2] The maximum grant regulation is applicable only to members of a family unit who live together; it does not apply to an eligible recipient who resides in another household or a child-care institution.

Plaintiffs have sued for themselves and on behalf of the class which they represent. Plaintiff Linda Williams resides with her eight children, who range in age from

[2] In the case of recipients who do not reside in Baltimore City the maximum grant is $240.00 per month. All plaintiffs in the instant case are residents of Baltimore City.

four years to sixteen. Their father is continuously absent from her home and she and one of her children are in poor health. They are totally without financial resources. This condition did not arise until sometime after the birth of her youngest child. Under the standards of need, her family should receive benefits in the amount of $296.15 per month while, in fact, she is granted maximum welfare in the amount of $250.00 per month by reason of the application of the maximum grant regulation.

Plaintiffs Junius Gary and his wife live together with their eight children, who range in age from four years to eleven. Mr. Gary is totally disabled from working for medical reasons, and Mrs. Gary, who is required to remain at home to care for her children, is also in ill health. They are totally without financial resources. This condition did not arise until after the birth of their youngest child and until Mr. Gary became disabled for employment. According to the standards formulated by the Department of Public Welfare they should receive $331.50 per month for themselves and their eight children, but they are limited to a monthly grant of $250.00 by reason of the maximum grant regulation.

If Mrs. Williams were to place two of her children of twelve years or over with relatives, each child so placed would be eligible for assistance in the amount of $79.00 per month, and she and her six remaining children would still be eligible to receive the maximum grant of $250.00. If Mr. and Mrs. Gary were to place two of their children between the ages of six and twelve with relatives, each child so placed would be eligible for assistance in the amount of $65.00 per month, and they and their six remaining children would still be eligible to receive the maximum grant of $250.00.

From the testimony in the case, it appears that the maximum grant regulation has its genesis and rationale in the fact that the Governor and the General Assembly of Maryland have failed to appropriate sufficient funds for Maryland's share of the cost of AFDC to satisfy the state-determined need of all persons entitled to benefit thereunder.

**The purpose of the maximum grant regulation is solely to to conserve state funds, by allocating state funds (less in amount than state-recognized need) among only some of the persons entitled thereto. Because the amount of federal funds to support AFDC is computed on the basis of the need of recipients, rather than the extent to which the State satifies that need, the maximum grant regulation has the incidental effect of increasing the federal government's share of the cost of the total program beyond what would be the amount of that share had the maximum grant regulation not been adopted.**

I.

The history, the scope and the basic purposes of the AFDC program, initiated as part of the Social Security Act of 1935, are fully developed in *King v. Smith, supra*, to which reference is made for a fuller treatment. It suffices to state that while State participation in the scheme of cooperative federalism is voluntary on the part of each State, and while each State "is free to set its own standards of need," as well as "to determine the level of benefits by the amount of funds it devotes to the program" (*King v. Smith, supra*, at 318-319), those which desire to take advantage of the substantial federal funds available for distribution to needy children are required to submit an AFDC plan for the approval of the Secretary of Health, Education and Welfare. 42 U.S.C.A. §§601-604.[3] The plan, to be valid, must conform to the requirements of the Act and applicable regulations of the Secretary.[4]

Section 402 of the Act, 42 U.S.C.A. §602, sets forth the mandatory requirements of a state plan for aid and serv-

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[3] This record does not reflect whether Maryland's "maximum grant" regulation has been given such approval. Presumably, because of its newness, it has not. But approval, while of interest, would beg the question of whether it comports with the Act and the Constitution.

[4] Congress has the unquestioned power to fix the terms upon which its allotments to states shall be disbursed. *King v. Smith, supra; Ivanhoe Irrigation District v. McCracken*, 357 U.S. 275 (1958); *Oklahoma v. United States Civil Serv. Com.*, 330 U.S. 127 (1947).

ices to needy families with children. *Inter alia*, the plan must "provide, effective July 1, 1951, that all individuals wishing to make application for aid to families with dependent children shall have the opportunity to do so, and that aid to families with dependent children shall be furnished with reasonable promptness to *all* eligible individuals" (emphasis supplied). The mandate is clear that, within the framework of state-determined standards of need, the State must meet those needs in regard to "all eligible individuals."

Who are "eligible individuals" is supplied by other provisions of the Act. Section 401 of the Act, 42 U.S.C.A. §601, states that the legislative purpose of appropriations under AFDC is:

> "For the purpose of encouraging the care of dependent children in their own homes or in the homes of relatives by enabling each State to furnish financial assistance and rehabilitation and other services, as far as practicable under the conditions in such State, *to needy dependent children and the parents or relatives with whom they are living* to help maintain and strengthen family life and to help such parents or relatives to attain or retain capability for the maximum self-support and personal independence consistent with the maintenance of continuing parental care and protection * * *." (emphasis supplied.)[5]

"Dependent child" is defined in §406, of the Act, as amended, 42 U.S.C.A. §606(a).[6] Where there exists a "de-

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[5] As originally enacted, AFDC permitted State disqualification for benefits on the grounds of illegitimacy or state determination that a dependent child did not reside in a "suitable home." As part of legislation outlawing immorality and illegitimacy as disqualifying factors, Congress enacted 42 U.S.C.A. §608 to permit payments to States for benefits to "dependent children" placed in foster homes and child-care institutions. See discussion *King v. Smith*, pp. 322-324.

[6] The full text of § 606(a) follows:

"§ 606. Definition

When used in this subchapter—

(a) The term "dependent child" means a needy child (1) who has been deprived of parental support or care by reason of the

pendent child," the "aid to families with dependent children," which is the object of the legislation, is defined to include money payments or medical care to the relatives with whom the dependent child is living; and if that relative is a parent, to the spouse of such parent, under certain circumstances. 42 U.S.C.A. §606(b).[7] The amount of such aid, under the circumstances just mentioned, is thus computed by treating the relative, parent or spouse of parent, as the case may be, of the "dependent child" as a part of the family unit.

It will be noted that the definitions contain no limitation on eligibility by reason of the fact that one, who is otherwise a "dependent child," resides in a household with or without one or more other siblings or other persons. Nor do the definitions or any other portion of the Act[8] vest in any state the authority to embroider upon the definition of "dependent child," so as to insert conditions and limitations beyond those imposed by Congress. For practical purposes, Maryland's maximum grant regulation means (assuming that the family lacks other financial resources) that in computing the amount of an award, any dependent child in excess of the fourth dependent child living with both parents, or any dependent child in excess of the fifth

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death, continued absence from the home, or physical or mental incapacity of a parent, and who is living with his father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt, first cousin, nephew, or niece, in a place of residence maintained by one or more of such relatives as his or their own home, and (2) who is (A) under the age of eighteen, or (B) under the age of twenty-one and (as determined by the State in accordance with standards prescribed by the Secretary) a student regularly attending school, college, or university, its equivalent, or regularly attending a course of vocational or technical training designed to fit him for gainful employment."

[7] 42 U.S.C.A. § 608 modifies this definition, however, to permit a child to be treated as a "dependent" child when he has been placed in a foster home or a child-care institution under the conditions set forth in that section. See also, ft. 5, *supra*.

[8] We discuss, *infra*, defendants' contention that the Social Security Act Amendments of 1967 constitute implied Congressional recognition of the validity of Maryland's maximum grant regulation.

dependent living with one parent, does not count as a "dependent child." In effect, therefore, Maryland's maximum grant regulation would permit Maryland to avoid the mandate of §402 that it provide payments to "*all*" eligible individuals.[9]

Maryland's maximum grant regulation also violates part of the basic philosophy underlying AFDC. As originally enacted, §406 of the Act, 49 Stat. 629, defined a "dependent child" as one under age sixteen, in need, and living with his parents or a certain class of relatives.[10] The designated class of relatives was expanded in 1956 by 70 Stat. 850, 855.[11] And as we have noted, in 1961 the definition of "dependent child" was amended to permit benefits to be granted to needy children in foster homes or in child-care institutions. The 1961 amendment, 75 Stat. 75, also permitted aid to children whose need arose from unemployment of their parents not attributable to physical or mental incapacity. It is clear, nevertheless, that one of the principal purposes of AFDC was to preserve intact the family unit.[12] The inclusion of relatives, other than par-

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[9] Of course, in the case of a "dependent child" moneys disbursed for him are paid not to him but to a responsible adult, child-care institution, child-placement or child-care agency for his benefit. See, *e.g.*, 42 U.S.C.A. § 608. Other provisions of the Act make clear, however, that a benefit so paid is treated strictly as a benefit for the child and not to the recipient. For example, 42 U.S.C.A. § 602(b) enjoins the Secretary not to approve a State plan which denies aid with respect to any child who has not met certain age or residency requirements; and 42 U.S.C.A. § 605 permits a State to provide counseling and guidance services "[W]henever the State agency has reason to believe that any payments of aid to families with dependent children made with respect to a child are not being or may not be used in the best interests of the child." That the "dependent child" is an "eligible" recipient is manifest.

[10] i.e., grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle or aunt.

[11] This amendment added first cousins, nephews and nieces to the qualifying group.

[12] Senate Report No. 628, 74th Congress (1935) states: "Through cash grants adjusted to the *needs* of the family *it is possible to keep young children with their mother in their own home*, thus preventing the necessity of placing children in institutions. This is recognized

ents, and the subsequent expansion of the class of qualifying relatives were to take care of the situations where both parents were dead or continually absent from the home and a relative was acting *in loco parentis*. Provision for aid to children whose parents were unemployed for reasons other than physical or mental incapacity was to respond to need, while provision for aid to children in foster homes or child-care institutions was, again, to meet need under a scheme which recognized that "there are some home environments that are clearly contrary to the best interest of these children." It is interesting to note that Senate Report No. 165, 87th Cong. (1st Sess.), 1961 U. S. Code Cong. and Adm. News, pp. 1716, 1721, in which the quoted statement was made, reaffirmed that "[t]he objective of the aid to dependent children program is to provide cash assistance for needy children in their own homes."[13]

The Maryland maximum grant regulation is in conflict with this legislative purpose, both as expressed in the Act and in its legislative history. As has been shown, the maximum grant regulation provides a powerful economic incentive to break up large families by placing "dependent children" in excess of those whose subsistence needs, when added to the subsistence needs of other members of the family, exceed the maximum grant, in the homes of per-

---

by everyone to be the least expensive and altogether most desirable method for meeting the needs of these families that has yet been devised." (Emphasis supplied.)

House Report No. 615, 74th Congress (1935) also states: "* * * it has long been recognized in this country that the best provision that can be made for families of this description (without a potential breadwinner) is public aid with respect to dependent children *in their own homes.*" (Emphasis supplied.)

[13] It is also worthy of note that 8A Ann. Code of Md., Art. 88A, § 44A states: "It is hereby declared that the primary purpose of aid given under this subtitle *is the strengthening of family life* through services and financial aid, *whereby families may be assisted to maximum self-support in homes meeting the requirements for child care* established by law in this State." Plaintiffs suggest a conflict between the regulation and this statute. Since plaintiffs do not press the point, we do not consider it.

sons included in the class of eligible relatives. If this is done, the pernicious effect of the maximum grant regulation is avoided, but the purpose of keeping them in their own home is defeated.

Defendants contend that the portion of the Social Security Act Amendments of 1967 which amended §403 of the Act, 42 U.S.C.A. §603, by adding a new subsection (d) thereto, is clear Congressional recognition that a State may impose a maximum grant limitation on benefits which it disburses. In general, §403 provides for payments to the State of the federal portion of the cost of AFDC and specifies how that portion is to be computed. The text of the new subsection (d) is set forth in the margin.[14]

We do not think that §403(d) of the Act has the effect which defendants claim. Section 403(d) relates only to a determination of the amount of federal matching funds. It limits federal funds to the number of certain defined individuals who fall within the definition of "dependent children" but it does not purport to affect a State's obligation to *all* of the individuals who fall within that definition if a State participates in AFDC as required by §602. The limitation on federal funds is applicable *only* (a) to dependent children under age 18 (while the definition of "dependent children" contained in §406(a) of the Act includes some children between 18 and 21), and (b) to dependent children deprived of parental support by reason of the continued absence of a parent (while the definition of "dependent child" contained in the Act also includes

[14] "(d) Notwithstanding any other provision of this Act, the average monthly number of dependent children under the age of 18 who have been deprived of parental support or care by reason of the continued absence from the home of a parent with respect to whom payments under this section may be made to a State for any calendar quarter after June 30, 1968, shall not exceed the number which bears the same ratio to the total population of such State under the age of 18 on the first day of the year in which such quarter falls as the average monthly number of such dependent children under the age of 18 with respect to whom payments under this section were made to such State for the calendar quarter beginning January 1, 1968, bore to the total population of such State under the age of 18 on that date."

need arising from the death or physical or mental incapacity or unemployment of a parent. By contrast, Maryland's maximum grant regulation cuts a broad swath on a non-selective basis.

Much of the legislative history of new subsection (d) is irrelevant, but there is enough history to provide an explanation for its selective operation. House Report No. 544, 90th Con., 1st Sess., p. 110, where subsection (d) had its genesis, states that its purpose would limit federal expenditures in the absent parent subcategory of "dependent children," which is the fastest growing subcategory of need, and "should also give the States an incentive to make effective use of the constructive programs[15] which the bill would establish." The addition of subsection (d) was eliminated by the Senate but reinserted, in modified form, by the Conference Committee. In the Second Session of the 90th Congress, another effort was made in the Senate to eliminate subsection (d), but the attempt was abortive.

The statement of Representative Mills, who was Chairman of the House Ways and Means Committee, where the AFDC freeze provision originated and who was also floor manager of the bill, is significant in explaining the purpose of the bill and *in negating the effect claim for it by defendants*. He said:

> "Finally, Mr. Chairman, the bill would add a provision to present law which would limit Federal financing for the largest AFDC category — where the parent is absent from the home — to the proportion of each State's total child population that is now receiving AFDC in this category. This provision, we believe, would give the States an additional incentive to make effective use of the constructive programs which the bill would establish. Moreover, this *limitation on*

[15] The 1967 Amendments, P. L. 90-248; 81 Stat. 821, *inter alia*, established a work incentive program for recipients, provided for the employment of qualified recipients in administering the program and provided means for locating parents who desert or abandon dependent children, including the furnishing of last-known addresses by the Internal Revenue Service.

*Federal matching will not prevent any deserving family from receiving aid payments. The States would not be free to keep any family off the rolls to keep within this limitation* because there is a requirement in the law that requires equal treatment of recipients and uniform administration of a program within a state. . . ." 113 Cong. Rec. H. 10670 (August 17, 1967; unbound) (emphasis supplied).[16]

Because of its selective nature, because it applies only to a determination of the amount of a federal grant and because its legislative history shows that it had a special purpose other than that ascribed to it by defendants, we conclude that subsection (d) is of no aid or comfort to defendants. Thus, the basic purpose of the Act that, when a State participates in AFDC, all dependent children receive benefits thereunder according to need is unsullied, and the Maryland maximum grant regulation is manifestly in conflict. Therefore, Maryland's maximum grant regulation cannot stand.

II.

Our view that the Maryland regulation is invalid is reinforced by our conclusion that the regulation cannot stand under the equal protection clause. It is, therefore, appropriate that we discuss the constitutional issue.

We have searched the record in vain for any state purpose to be served by the maximum grant regulation other than to fit the total needs of the State's dependent children, as measured by the State's standards of their subsistence requirements, into an inadequate State appropriation. The search was important, and the absence of another reason fatal to the defense, because, clearly, dependent children of large families receive different treatment from dependent children of small families. Discrimination of

[16] In regard to the last part of Chairman Mills' statement, it should be noted that § 402 of the Act, 42 U.S.C.A. § 602, requires that AFDC be effective in all political subdivisions of a participating State, as well as aid be furnished with reasonable promptness to all eligible individuals.

this type, not to run afoul of the equal protection clause, must be founded on reason in the light of its purpose. *McLaughlin v. Florida*, 379 U.S. 184, 189 (1964). While a State may classify persons for various purposes, it may not do so on arbitrary or irrational grounds. *Yick Wo v. Hopkins*, 118 U.S. 356 (1886); *Carrington v. Rash*, 380 U.S. 89 (1965). As most recently stated by the Supreme Court, in a case holding a wrongful death statute which denied recovery to illegitimate children while permitting recovery to lawful issue invalid under the equal protection clause:

> "While a State has broad power when it comes to making classifications * * it may not draw a line which constitutes an invidious discrimination against a particular class. * * * Though the test has been variously stated, the end result is whether the line drawn is a rational one. * * *" *Levy v. Louisiana*, 391 U.S. 68, 71 (1968).

See also, *Glona v. American Guar. & L. Ins. Co.*, 391 U.S. 73 (1968).

That under these rules the maximum grant regulation is offensive is easily demonstrable. AFDC is a program to provide support for dependent children. By the standards of need set by Maryland, a dependent child is in as great need and as deserving of aid, whether he be the fourth or the eighth child of a family unit, although if the latter, the amount of his need may not be quite as great as that of the former, because it is cheaper to provide clothing, food and shelter for the eighth child than for the fourth. Yet, the maximum grant regulation, in accomplishing its purpose of conservation of inadequate funds, assumes that a child, because he is the eighth (or any other number where to grant him benefits would bring the aggregate benefits to the family unit over the maximum grant) is either not in need or that his need must go unsatisfied. Reason and logic will not support such a result. The fact that such a child, if moved to the home of an eligible relative, may receive such benefits lends additional support to this conclusion. In effect, Maryland impermissibly conditions his eligibility for benefits upon the relinquishment

of the parent-child relationship. *Cf. Sherbert v. Verner*, 374 U.S. 398 (1963). The result we reach is fully in accord with that of other courts which have considered the same or similar questions. *Collins v. State Board of Social Welfare*, 248 Iowa 369, 81 N.W. 2d 4 (1957); *Anderson v. Schaefer*, ..... F. S. ..... (N.D. Ga. 1968); *Metcalf v. Swank*, ..... F. S. ..... , 37 L.W. 2277 (N.D. Ill. 1968) (dictum). We hold, therefore, that the maximum grant regulation transgresses the equal protection clause.

III.

Lest our holdings be misunderstood, some additional words are required. We do not hold that Maryland must appropriate additional funds to support its participation in the program of AFDC; we reiterate our previous holding that the Eleventh Amendment deprives courts of the United States from jurisdiction to grand such relief.

We hold only that if Maryland has appropriated insufficient funds to meet the total need under AFDC, as measured by the standards for determining need that Maryland has prescribed, Maryland may not, consistent with the Social Security Act or the equal protection clause, correct the imbalance by application of the maximum grant regulation. No other proposed solution to this problem is before us, and we express no other opinion.

Within ten days counsel may agree upon and present a form of order consistent with these views.

/s/ HARRISON L. WINTER,
United States Circuit Judge.

/s/ ROSZEL C. THOMSEN,
Chief Judge,
United States District Court.

/s/ ALEXANDER HARVEY, II,
United States District Judge.

*United States District Court for the District of Maryland*

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MOTION TO AMEND FINDINGS OF FACT AND JUDGMENT OR IN THE ALTERNATIVE TO TAKE ADDITIONAL TESTIMONY, OR FOR A NEW TRIAL, OR IN THE ALTERNATIVE TO ALTER OR AMEND THE JUDGMENT

Defendants move, pursuant to rules 52 (b) and 59 of the Federal Rules of Civil Procedure, that this court amend its findings and judgment, or grant a new trial of this cause or receive additional evidence and alter or amend the judgment. The grounds of this Motion are set out in the accompanying Memorandum, Affidavits, and Exhibits.

(Signatures and Certificate of Service.)

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*United States District Court for the District of Maryland*

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EXCERPTS FROM

Exhibit A to Defendant's "Memorandum In Support Of Motion To Amend Findings Of Fact And Judgment Or In The Alternative To Take Additional Testimony, Or For A New Trial Or In The Alternative To Alter Or Amend The Judgment" (excerpts from Rules of Maryland State Department of Public Welfare regarding maximum grant limitations).

Effective May 1, 1964

Public Assistance Rule 200

VII — Amount of Grant and Payment

1. *Amount* — The amount of the grant is the amount of need, namely, the resulting amount when resources are deducted from requirements as set forth in this Rule, *except* that:

A. A grant from a single category may not exceed:

a. $230 for local departments under any "Plan A" of Shelter Schedule B

b. $220 for local departments under any "Plan B" of Shelter Schedule B

c. $210 for local departments under any "Plan C" of Shelter Schedule B

*Note:* If the resource of support is paid as a refund (V-2, F) the grant may exceed the maximum by an amount of such refund. This makes consistent the principle that the amount from public assistance funds does not exceed the maximum.

B. A grant is subject to any limitation established by any existing rule on insufficient funds.

Release #294
3-64
II — Rule 200 — Page 20

* * * * * *

Effective February 1, 1964

Public Assistance Rule 200

VII — Amount of Grant and Payment

1. *Amount* — The amount of the grant is the amount of need, namely, the resulting amount when resources are deducted from requirements as set forth in this Rule, *except* that:

A. A grant from a single category may not exceed:

a. $230 for local departments under any "Plan A" of Shelter Schedule B

b. $220 for local departments under any "Plan B" of Shelter Schedule B

c. $210 for local departments under any "Plan C" of Shelter Schedule B

B. A grant is subject to any limitation established by any existing rule on insufficient funds.

Release #288
8-63
II — Rule 200 — Page 20

• • • • • •

Effective September 1, 1963

Public Assistance Rule 200

VII — Amount of Grant and Payment.

1. *Amount* — The amount of the grant is the amount of need, namely, the resulting amount when resources are deducted from requirements as set forth in this Rule, *except* that:

A. A grant from a single category may not exceed:

a. $230 for local departments under any "Plan A" of Shelter Schedule B

b. $220 for local departments under any "Plan B" of Shelter Schedule B

c. $210 for local departments under any "Plan C" of Shelter Schedule B

B. A grant is subject to any limitation established by any existing rule on insufficient funds.

Release #288
8-63
II — Rule 200 — Page 20

• • • • • •

Effective September 1, 1962

Public Assistance Rule 200

VII — Amount of Grant and Payment

1. *Amount* — The amount of the grant is the amount of need, namely, the resulting amount when resources are deducted from requirements as set forth in this Rule, *except* that:

   A. No grant may exceed:

      a. $230 for local departments under any "Plan A" of Shelter Schedule B

      b. $220 for local departments under any "Plan B" of Shelter Schedule B

      c. $210 for local departments under any "Plan C" of Shelter Schedule B

   B. A grant is subject to any limitation established by any existing rule on insufficient funds.

Release #275
7-62
II — Rule 200 — Page 20

* * * * * *

Effective July 1, 1961

Public Assistance Rule 200

VII — Amount of Grant and Payment

1. *Amount* — The amount of the grant is the amount of need, namely, the resulting amount when resources are deducted from requirements as set forth in this Rule, *except* that:

   A. No grant may exceed:

      a. $210 for local departments under any "Plan A" of Shelter Schedule B

      b. $200 for local departments under any "Plan B" of Shelter Schedule B

c. $190 for local departments under any "Plan C" of Shelter Schedule B

B. A grant is subject to any limitation established by any existing rule on insufficient funds.

Release #261
5-61
II — Rule 200 — Page 20

• • • • • •

Effective June 1, 1960

Public Assistance Rule 200

VII — Amount of Grant and Payment

1. *Amount* — The amount of the grant is the amount of need, namely, the resulting amount when resources are deducted from requirements as set forth in this Rule, *except* that:

A. No grant may exceed:

a. $210 for local departments under any "Plan A" of Shelter Schedule B

b. $200 for local departments under any "Plan B" of Shelter Schedule B

c. $190 for local departments under any "Plan C" of Shelter Schedule B

B. A grant is subject to any limitation established by any existing rule on insufficient funds.

Release #249
5-60
II — Rule 200 — Page 20

• • • • • •

Effective October 1, 1958

Public Assistance Rule 200

VII — Amount of Grant and Payment

1. *Amount* — The amount of the grant is the amount of need, namely, the resulting amount when re-

sources are deducted from requirements as set forth in this Rule, *except* that:

A. No grant may exceed:

a. $210 for local departments under any "Plan A" of Shelter Schedule B

b. $200 for local departments under any "Plan B" of Shelter Schedule B

c. $190 for local departments under any "Plan C" of Shelter Schedule B

B. A grant is subject to any limitation established by any existing rule on insufficient funds.

Release #232
10-58
II — Rule 200 — Page 20

* * * * * *

Effective April 1, 1957

Public Assistance Rule 200

VII — Amount of Grant and Payment

1. *Amount* — The amount of the grant is the amount of need, namely, the resulting amount when resources are deducted from requirements as set forth in this Rule, *except* that:

A. No grant may exceed $180.

B. A grant is subject to any limitation established by any existing rule on insufficient funds.

Release #221
9-57
II — Rule 200 — Page 20

* * * * * *

Effective February 1, 1957

Public Assistance — Rule 200

VII — Amount of Grant and Payment

1. *Amount* — The amount of the grant is the amount of need, namely, the resulting amount when resources are deducted from requirements as set forth in this Rule, *except* that:

   A. No grant may exceed $180.

   B. A grant is subject to any limitation established by any existing rule on insufficient funds.

Release #212
12-56
II — Rule 200 — Page 20

* * * * * *

Effective January 1, 1954

Public Assistance — Rule 200

VII — Amount of Grant and Payment

1. *Amount* — The amount of the grant is the amount of need, namely, the resulting amount when resources are deducted from requirements as set forth in this Rule, *except* that:

   A. No grant may exceed $175.

   B. A grant is subject to any limitation established by any existing rule on insufficient funds.

Release #180
12-53
II — Rule 200 — Page 20

* * * * * *

Effective October 1, 1952

Public Assistance — Rule 200

VII — Amount of Grant and Payment

1. *Amount* — The amount of the grant is the amount of need, namely, the resulting amount when resources are deducted from requirements as set forth in this Rule, *except* that:

   A. No grant may exceed $175.

   B. A grant is subject to any limitation established by any existing rule on insufficient funds.



* * * * * *

Effective January 1, 1951

Public Assistance — Rule 200

VII — Amount of Grant and Payment

1. *Amount* — The amount of the grant is the amount of need, namely, the resulting amount when resources are deducted from requirements. The actual amount of grant paid, however, is subject to two limitations:

   A. Any existing current rule on insufficient funds.

   B. Maximum amount on monthly grants as set forth in Schedule T of this Rule.

SCHEDULE T

## MAXIMUM AMOUNT OF MONTHLY GRANT

| I<br>*Type of Assistance* | II<br>*Maximum Amount of Monthly Grant*<br>(except as specified in Column III) | III<br>*Exceptions* |
|---|---|---|
| OAA<br>PANB<br>APTD<br>GPA (one person) | $55 | When need of payee includes:<br>Nursing care<br>Special diet prescribed by physician<br>Guide service to the blind<br>Maintenance of "seeing eye" dog<br>Maximum is:<br>A—$90<br>B—$80<br>C—$70<br>As specified for local departments in Schedule D of this Rule |
| ADC<br>GPA 2( or more persons)<br>or<br>Any combination of assistance grants to an entire assistance unit. | *Group A*—— $165<br>Allegany, Anne Arundel, Balto. City, Balto. Co., Cecil, Montgomery, Pr. George's | |
| | *Group B*—— $155<br>Charles, Frederick, Harford, Howard, Washington | When need of any member of assistance unit includes special diet prescribed by physician: |
| | *Group C*—— $145<br>Calvert, Caroline, Carroll, Dorchester, Garrett, Kent, Qn. Anne's, St. Mary's, Somerset, Talbot, Wicomico, Worcester | No maximum |



* * * * * *

(Effective February, 1950)

Public Assistance — Rule 200

XIV — Insufficient Funds

1. Due to insufficient funds no ADC grant may exceed the maximum amounts specified for each local department as follows:

*Group A:*

Allegany, Anne Arundel, Baltimore City, Baltimore Co., Cecil, Montgomery, Prince George's

*Group B:*

Charles, Frederick, Harford, Howard, Washington

| *Number Of Persons* | *Maximum Monthly Grant* | *Number Of Persons* | *Maximum Monthly Grant* |
|---|---|---|---|
| 2 | $ 72.00 | 2 | $ 67.00 |
| 3 | 85.00 | 3 | 80.00 |
| 4 | 100.00 | 4 | 95.00 |
| 5 | 114.00 | 5 | 109.00 |
| 6 | 123.00 | 6 | 118.00 |
| 7 | 132.00 | 7 | 127.00 |
| 8 | 141.00 | 8 | 136.00 |
| 9 | 150.00 | 9 | 145.00 |
| 10 or more | 159.00 | 10 or more | 154.00 |

*Group C:*

Calvert, Carroll, Dorchester, Garrett, Wicomico, Worcester

*Group D:*

Caroline, Kent, Queen Anne's, St. Mary's, Somerset, Talbot

| *Number Of Persons* | *Maximum Monthly Grant* | *Number Of Persons* | *Maximum Monthly Grant* |
|---|---|---|---|
| 2 | $ 63.00 | 2 | $ 61.00 |
| 3 | 76.00 | 3 | 74.00 |
| 4 | 91.00 | 4 | 89.00 |
| 5 | 105.00 | 5 | 102.00 |
| 6 | 114.00 | 6 | 111.00 |
| 7 | 123.00 | 7 | 120.00 |
| 8 | 132.00 | 8 | 129.00 |
| 9 | 141.00 | 9 | 138.00 |
| 10 or more | 150.00 | 10 or more | 147.00 |

(Effective June 1, 1949)

Public Assistance — Rule 200

XIII — Insufficient Funds

1. Due to insufficient funds no ADC grant may exceed the maximum amounts specified for each local department as follows:

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| *Group A* | | | | | | | |
| Allegany | $121.00 | per month | for | 5 | persons | or less | |
| Anne Arundel | 132.00 | " | " | 6 | " | | |
| Baltimore City | 143.00 | " | " | 7 | " | | |
| Baltimore County | 154.00 | " | " | 8 | " | | |
| Cecil | 165.00 | " | " | 9 | " | | |
| Montgomery | 176.00 | " | " | 10 | " | | or more |
| Prince George's | | | | | | | |
| *Group B* | | | | | | | |
| Charles | $117.00 | per month | for | 5 | persons | or less | |
| Frederick | 128.00 | " | " | 6 | " | | |
| Harford | 139.00 | " | " | 7 | " | | |
| Howard | 150.00 | " | " | 8 | " | | |
| Washington | 161.00 | " | " | 9 | " | | |
| | 172.00 | " | " | 10 | " | | or more |

5-49
II — Rule 200 — Page 16

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(Effective December 1, 1948)

Public Assistance — Rule 200

XIII — Insufficient Funds

1. Due to insufficient funds no ADC grant may exceed the maximum amounts specified for each local department as follows:

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| *Group A* | | | | | | | |
| Allegany | $121.00 | per month | for | 5 | persons | or less | |
| Anne Arundel | 132.00 | " | " | 6 | " | | |
| Baltimore City | 143.00 | " | " | 7 | " | | |
| Baltimore County | 154.00 | " | " | 8 | " | | |
| Cecil | 165.00 | " | " | 9 | " | | |
| Montgomery | 176.00 | " | " | 10 | " | | or more |
| Prince George's | | | | | | | |
| *Group B* | | | | | | | |
| Charles | $117.00 | per month | for | 5 | persons | or less | |
| Frederick | 128.00 | " | " | 6 | " | | |
| Harford | 139.00 | " | " | 7 | " | | |
| Howard | 150.00 | " | " | 8 | " | | |
| Washington | 161.00 | " | " | 9 | " | | |
| | 172.00 | " | " | 10 | " | | or more |

*Group C*

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| Calvert | $112.00 | per | month | for | 5 | persons | or less |
| Carroll | 123.00 | " | " | " | 6 | " | |
| Dorchester | 134.00 | " | " | " | 7 | " | |
| Garrett | 145.00 | " | " | " | 8 | " | |
| Wicomico | 156.00 | " | " | " | 9 | " | |
| Worcester | 167.00 | " | " | " | 10 | " | or more |

*Group D*

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| Caroline | $110.00 | per | month | for | 5 | persons | or less |
| Kent | 121.00 | " | " | " | 6 | " | |
| Queen Anne's | 132.00 | " | " | " | 7 | " | |
| St. Mary's | 143.00 | " | " | " | 8 | " | |
| Somerset | 154.00 | " | " | " | 9 | " | |
| Talbot | 165.00 | " | " | " | 10 | " | or more |

The ADC maximum will apply for GPA if it is a family group including children.

12-48
11 — Rule 200 — Pages 15 & 15A

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(Effective October 1, 1948)

Public Assistance — Rule 200

XIII — Insufficient Funds

1. Due to insufficient funds no ADC grant may exceed the maximum amounts specified for each local department as follows:

*Group A*

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| Allegany | $121.00 | per | month | for | 5 | persons | or less |
| Anne Arundel | 132.00 | " | " | " | 6 | " | |
| Baltimore City | 143.00 | " | " | " | 7 | " | |
| Baltimore County | 154.00 | " | " | " | 8 | " | |
| Cecil | 165.00 | " | " | " | 9 | " | |
| Montgomery | 176.00 | " | " | " | 10 | " | or more |
| Prince George's | | | | | | | |

*Group B*

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| Charles | $117.00 | per | month | for | 5 | persons | or less |
| Frederick | 128.00 | " | " | " | 6 | " | |
| Harford | 139.00 | " | " | " | 7 | " | |
| Howard | 150.00 | " | " | " | 8 | " | |
| Washington | 161.00 | " | " | " | 9 | " | |
| | 172.00 | " | " | " | 10 | " | or more |

*Group C*

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| Calvert | $112.00 | per | month | for | 5 | persons | or less |
| Carroll | 123.00 | " | " | " | 6 | " | |
| Dorchester | 134.00 | " | " | " | 7 | " | |
| Garrett | 145.00 | " | " | " | 8 | " | |
| Wicomico | 156.00 | " | " | " | 9 | " | |
| Worcester | 167.00 | " | " | " | 10 | " | or more |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| *Group D* | | | | | | | |
| Caroline | $110.00 | per | month | for | 5 | persons | or less |
| Kent | 121.00 | " | " | " | 6 | " | |
| Queen Anne's | 132.00 | " | " | " | 7 | " | |
| St. Mary's | 143.00 | " | " | " | 8 | " | |
| Somerset | 154.00 | " | " | " | 9 | " | |
| Talbot | 165.00 | " | " | " | 10 | " | or more |

The ADC maximum will apply for GPA if it is a family group including children.

8-48
11 — Rule 200 — Pages 15 & 15A

* * * * * *

(Effective July 1, 1948)

Public Assistance — Rule 200

XIII — Insufficient Funds

1. Due to insufficient funds no ADC grant may exceed the maximum amounts specified for each local department as follows:

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| *Group A* | | | | | | | |
| Allegany | $100.00 | per | month | for | 4 | persons | |
| Anne Arundel | 110.00 | " | " | " | 5 | " | |
| Baltimore City | 120.00 | " | " | " | 6 | " | |
| Baltimore County | 130.00 | " | " | " | 7 | " | |
| Cecil | 140.00 | " | " | " | 8 | " | |
| Montgomery | 150.00 | " | " | " | 9 | " | |
| Prince George's | 160.00 | " | " | " | 10 | " | |
| | 170.00 | " | " | " | 11 | " | or more |
| *Group B* | | | | | | | |
| Charles | $ 96.00 | per | month | for | 4 | persons | |
| Frederick | 106.00 | " | " | " | 5 | " | |
| Harford | 116.00 | " | " | " | 6 | " | |
| Howard | 126.00 | " | " | " | 7 | " | |
| Washington | 136.00 | " | " | " | 8 | " | |
| | 146.00 | " | " | " | 9 | " | |
| | 156.00 | " | " | " | 10 | " | |
| | 166.00 | " | " | " | 11 | " | or more |
| *Group C* | | | | | | | |
| Calvert | $ 91.00 | per | month | for | 4 | persons | |
| Carroll | 101.00 | " | " | " | 5 | " | |
| Dorchester | 111.00 | " | " | " | 6 | " | |
| Garrett | 121.00 | " | " | " | 7 | " | |
| Wicomico | 131.00 | " | " | " | 8 | " | |
| Worcester | 141.00 | " | " | " | 9 | " | |
| | 151.00 | " | " | " | 10 | " | |
| | 161.00 | " | " | " | 11 | " | or more |

*Group D*

| | | | | | | |
|---|---|---|---|---|---|---|
| Caroline | $ 89.00 | per | month | for | 4 | persons |
| Kent | 99.00 | " | " | " | 5 | " |
| Queen Anne's | 109.00 | " | " | " | 6 | " |
| St. Mary's | 119.00 | " | " | " | 7 | " |
| Somerset | 129.00 | " | " | " | 8 | " |
| Talbot | 139.00 | " | " | " | 9 | " |
| | 149.00 | " | " | " | 10 | " |
| | 159.00 | " | " | " | 11 | " or more |

The ADC maximum will apply for GPA if it is a family group including children.

6-48
II — Rule 200 — Pages 15 & 15A

* * * * * *

(Effective July 1, 1947)

Public Assistance — Rule 200

XIII — Insufficient Funds

1. Due to insufficient funds no ADC grant may exceed:

| | | | | | |
|---|---|---|---|---|---|
| $100.00 | per | month | for | 4 | persons |
| 110.00 | " | " | " | 5 | " |
| 120.00 | " | " | " | 6 | " |
| 130.00 | " | " | " | 7 | " |
| 140.00 | " | " | " | 8 | " |
| 150.00 | " | " | " | 9 | " |
| 160.00 | " | " | " | 10 | " |
| 170.00 | " | " | " | 11 | " or more |

The ADC maximum will apply for GPA if it is a family group including children.

2. GPA may be granted to meet the emergency needs of any able-bodied person and his family for a period not to exceed 10 days — provided the County Commissioners or the Mayor and City Council of Baltimore City shall have given written consent to the local department for the expenditure of local funds for this purpose.

3. The State Department will obtain from the local departments monthly reports showing the total amount of money by source of funds, Federal, State and Local, necessary to give assistance to all eligible cases pending.

II — Rule 200 — Page 15

* * * * * *

EXHIBIT B TO DEFENDANTS' "MEMORANDUM IN SUPPORT OF MOTION TO AMEND FINDINGS OF FACT AND JUDGMENT OR IN THE ALTERNATIVE TO TAKE ADDITIONAL TESTIMONY, OR FOR A NEW TRIAL OR IN THE ALTERNATIVE TO ALTER OR AMEND THE JUDGMENT."

State of Maryland, City of Baltimore, ss.

I, Raleigh C. Hobson, Director of the Maryland State Department of Social Services, state that the following is to the best of my knowledge, an accurate account of the development of the maximum grant requirement:

In late 1943, the State Department of Public Welfare adopted its rule and regulation No. 20, relating to the determination of welfare grants. Regulation 20 took effect on January 1, 1944. Prior to its adoption determination of amounts of grants was a function of county welfare boards and the amount of grant for similarly situated persons varied greatly from county to county. Regulation 20 constituted the first state-wide regulation of welfare grants.

At the time Regulation 20 was issued on November 29, 1943, the issuing bulletin, copy of which is annexed as an exhibit to this Affidavit (Exhibit J) stated, "The State Board will be considering the question of whether the regulation should permit the setting of a maximum amount above which no grant will go."

It is my recollection that in the years immediately following the promulgation or Regulation 20, the State Board encountered great opposition from county welfare boards in imposing a state-wide need formula. This opposition was founded on the fact that at the time the welfare costs produced by application of the formula were thrown on the county tax rate, a situation which continued to obtain until the adoption of the so-called "James Amendment" limiting county tax assessment obligations for welfare purposes. A second major ground of opposition was a feeling on the part of many county boards that the need scale was unrealistically high in relation to wage rates and em-

ployment opportunities in varying localities throughout the State.

It is my recollection that very shortly after promulgation of Regulation 20 on January 1, 1944, a maximum grant regulation was imposed.

Maximum grant regulations have been in continuous effect since the inception of state-wide welfare standards in Maryland. The State Board has periodically revised the regulation upward as needs increased because of increases in the cost of living and as additional State and Federal funds become available. Proposals to abandon the regulation have met with opposition both on grounds of cost and on grounds, more frequently voiced by members of county boards, that the maximum welfare payment should not significantly exceed the wage paid to ordinary unskilled labor. In presenting requests for additional budget allocations for welfare purposes to the Legislature and in addressing interested civic groups, I have found that the fact that there is a maximum grant limitation induces greater receptivity to requests for additional budget allocations for welfare purposes and corrects serious misapprehensions held by many in reference to the level of benefits conferred by the welfare system.

During the last two years, as a matter of policy, the Board has proposed the abandonment of maximum grant restrictions. The Legislature has declined to make funds available for this purpose. Budgetary allocations in Maryland for State public assistance programs have increased greatly in Maryland in recent years and it is my understanding that during the period 1957 to 1967, Maryland had the highest relative increase in the Nation in expenditures for public assistance money payments. See Exhibit K to this Affidavit.

The maximum grant regulation has been revised upward on at least seven occasions since its inception and regulations embodying it have been submitted for approval to the Department of Health, Education and Welfare on approximately twenty occasions since 1947 and

to the best of my knowledge, every Maryland maximum grant regulation submitted to the Department of Health, Education and Welfare, including the regulation currently in effect, has received the approval of the Department. Maximum grant regulations, and federal approval of them have thus been part of Maryland welfare practice since the inception of state-wide needs standards in Maryland in 1944.

Sworn to and subscribed to by me this 23rd day of December, 1968.

RALEIGH C. HOBSON,

Director, Maryland State Department of Social Services.

(Jurat.)

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EXHIBIT J TO EXHIBIT B

State Department of Public Welfare
120 W. Redwood Street
Baltimore - 1, Maryland

November 29, 1943

To: Executive Secretaries, Local Welfare Boards
Director, Department of Public Welfare of Baltimore

CC: Chairmen, Local Welfare Boards
Chairman, Department of Public Welfare of Baltimore

Re: Rule and Regulation #20

The preparation for putting Rule and Regulation #20 into effect, which is underway throughout the State, brings to light certain phases of the regulation which need modification, clarification or further comment.

*Section 2 — Method of Determining Amount*

First: Make a change on all copies of the regulation. In the second paragraph cross out the last part of the sentence: "provided there are other persons in the household eligible for general

public assistance." The effect of this deletion is that a recipient may receive a category and general public assistance at one and the same time, provided that need therefor has been established. It is known that there are few instances where this type of grant is needed, examples being bedridden aged persons, or ADC children whose living arrangement approaches a boarding care plan for which the agency assumes responsibility.

Second: The question has been asked, does this section mean that the agency's calculation of amount *must* be given, even though the applicant or recipient states that he does not need that much?

Attached to this circular letter is a discussion of the application of this section, in order to clarify its intention.

*Section 6 — Standards of Quantity and Cost*

This section states: "Standards of quantity and cost are determined by the local department for all items excepting food." The appendix then states (page 1) "Local Departments will find, in this appendix, reference material explaining the method by which the State Department arrived at a standard for food, as well as suggested methods by which local departments may establish standards for items which are left to the discretion of the local department."

Some of the material in the appendix has put requirements into method which some local departments feel are not workable. Therefore, please regard *all* appendix material with respect to method of establishing local standards for shelter, clothing and household maintenance as suggestive only. When submitting Form #344 on local policy, the test which the State Department will apply will be:

1. Is it understandable and explainable?

2. Does it clearly indicate, for use of the worker, when the amount is to be given, when it is not to be given?

*Section 10 — Insufficient Funds — Selection of Most Urgent Need*

Item 3 in this section states: "It is the intention and expectation that when funds are insufficient, local and state welfare departments will use *every means available to them* for securing the funds required in order to provide the legal base of a 'minimum subsistence compatible with decency and health' ".

What are the "means" available to the local welfare department which it is expected to take in order to secure the necessary funds?

1. At the time of levy it is intended that the local welfare department make request for sufficient funds. However, this amount must be accurately and reasonably arrived at. The State Manual requires that these local levy requests be submitted to the State Department for review before going to the Commissioners. Each local department approaching a levy date has received from this Department a letter giving instructions with respect to the preparation of the estimate and the supporting data necessary.

2. Local departments whose levy date is later than January 1st will need to consider whether there are, or are not, "means available" for securing more funds. The State Department recognizes the fact that appropriations are made once a year by local governments and that increases in this amount between levy dates are not made. Generally speaking, therefore, it would not be expected that local welfare departments submit formal estimates to Commissioners between levy dates. At the same time, the Commissioners should be cognizant of the effect of the rising cost of living upon assistance grants and it would

be assumed under most circumstances that the county welfare board would wish to discuss this with the Commissioners. Some adjustments with respect to funds have been possible. However, no local department should make formal request to the Commissioners for funds without prior submission to the State Department of estimates, just as would be true in the event of an approaching levy date.

3. The Rule and Regulation is to go into effect on January 1st, irrespective of the amount of money available. The circular letter of September 8, 1943 indicates that the regulation is in effect when the local standards have been set, and filed with the State Department of Public Welfare, and when the local standards are being applied to reconsiderations and new applicants. If funds are insufficient to take care of all need adequately, then the local department may make use of Section 10, *Insufficient Funds*, and also adjust its local standards accordingly.

The State Board will be considering the question of whether the regulation should permit the setting of a maximum amount above which no grant will go.

Sincerely yours,

J. MILTON PATTERSON,

Director.

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EXHIBIT K TO EXHIBIT B

Trends in Public Assistance Payments under Federally Aided Programs for Fiscal Years 1957-1967.

U. S. Department of Health, Education, and Welfare

Social and Rehabilitation Service

National Center for Social Statistics

October 1968

TABLE 3

States ranked by percent change in expenditures for money payments under federally aided public assistance programs between fiscal years 1957 and 1967.

STATES RANKED IN ORDER OF SIZE OF PERCENT CHANGE

| | | | | | |
|---|---|---|---|---|---|
| Maryland | 218 | New Mexico | 72 | Utah | 26 |
| Delaware | 182 | Mississippi | 70 | Vermont | 26 |
| New Jersey | 181 | Tennessee | 66 | North Dakota | 24 |
| New York | 171 | Alabama | 65 | Kansas | 23 |
| California | 164 | New Hampshire | 63 | South Dakota | 17 |
| District of Columbia | 123 | Rhode Island | 62 | Indiana | 12 |
| Virgin Islands | 117 | Florida | 49 | Idaho | 11 |
| Hawaii | 111 | Massachusetts | 49 | Missouri | 10 |
| Pennsylvania | 105 | Michigan | 49 | Puerto Rico | 10 |
| Illinois | 98 | Texas | 47 | Wyoming | 9 |
| Arkansas | 93 | Minnesota | 43 | Colorado | 1 |
| Kentucky | 85 | Georgia | 39 | Wisconsin | -0.3 |
| Nevada | 79 | Oklahoma | 35 | Nebraska | -2 |
| Connecticut | 77 | West Virginia | 32 | Washington | -5 |
| North Carolina | 76 | Oregon | 32 | Iowa | -7 |
| Virginia | 76 | Alaska | 30 | South Carolina | -12 |
| Ohio | 74 | Maine | 29 | Montana | -21 |
| Arizona | 73 | Louisiana | 28 | | |

TABLE 4

PUBLIC ASSISTANCE

Expenditures for medical vendor payments for specified programs and selected fiscal years
(In millions)

| Program | Fiscal Year 1957 | 1960 | 1961 | 1962 | 1965 | 1966 | 1967 |
|---|---|---|---|---|---|---|---|
| Total | $215 | $393 | $477 | $713 | $1,249 | $1,606 | $2,308 |
| OAA | 156 | 280 | 304 | 350 | 436 | 416 | 186 |
| AB | 4 | 8 | 8 | 9 | 12 | 10 | 3 |
| APTD | 28 | 46 | 55 | 68 | 128 | 133 | 43 |
| AFDC | 27 | 59 | 69 | 91 | 151 | 139 | 38 |
| MAA[1] | ---- | ---- | 43 | 196 | 524 | 538 | 95 |
| MA[2] | ---- | ---- | ---- | ---- | ---- | 372 | 1,944 |

[1] Program initiated in fiscal year 1961 under Title I of the Social Security Act as provided by the 1960 Amendments to that Act. Some State MAA programs included small amounts of money payments to recipients in which there was no federal financial participation.
[2] Program initiated in fiscal year 1966 under Title XIX of the Social Security Act as provided by the 1965 Amendments to that Act.

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## EXHIBIT C

### U. S. Department of Health, Education, and Welfare
### Welfare Administration
### Bureau of Family Services

### State Maximums and Other Methods of Limiting Money Payments to Recipients of Special Types of Public Assistance, October 1962

Annual Release

Division of Program Statistics and Analysis

Washington, D. C. March 1963

# State Maximums and Other Methods of Limiting Money Payments to Recipients of Special Types of Public Assistance, October 1962[1]

This release provides information on State maximums and other methods of limiting money payments to recipients of old-age assistance, aid to the blind, aid to families with dependent children, and aid to the permanently and totally disabled that were in effect in October 1962.[2]

Under the Public Welfare Amendments of 1962, effective October 1, 1962, the Federal share of assistance payments for aid to the blind and aid to the permanently and totally disabled is 29/35 of the first $35 of the average monthly payment per recipient, multiplied by the number of recipients, and from 50 to 65 percent (depending on the State's fiscal capacity as measured by per capita income) of that part of the State's average assistance payment that exceeds $35 (excluding any part of the average payment in excess of $70), multiplied by the number of recipients. The maximum subject to Federal participation under both parts of the formula is $70 times the number of recipients. For old-age assistance, the basis for Federal participation is the same as for aid to the blind and aid to the permanently and totally disabled except that for this program there is additional Federal participation based on vendor payments for medical care.[3] The matching formula for the program

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[1] Reports of this nature are normally submitted by State public assistance agencies for the month of September. The Public Welfare Amendments of 1962, however, made additional Federal funds available, effective October 1, 1962, for each of the four programs covered by the reports. In order that the initial effect of these changes might be reflected, the 1962 State reports were requested for the month of October instead of September.

[2] For information on States making vendor payments for medical care in October 1962 and expenditures for such payments, see the *Social Security Bulletin*, February 1963, pp. 26 and 27.

[3] For States with average monthly payments over $70, the Federal Government participates in the expenditures in excess of that amount

of aid to families with dependent children is similar in structure to the formulas for the other programs but the Federal share of the first part of the formula is fourteen-seventeenths of the first $17 of the average monthly payment per recipient, and the maximum amount subject to Federal participation is $30 times the number of recipients.[4]

*State Maximums on Assistance Payments*

Through October 1962 no State had adopted a maximum on the average monthly payment per recipient despite the use of the averaging principle in the Federal maximums beginning with October 1958. For each of the special types of public assistance, however, the States that had maximums on individual payments prior to the 1958 Public Assistance Amendments largely continued such maximums.

The number of States having maximums has been declining gradually in recent years under each of the programs. Despite this trend, however, in October 1962, for each program, a majority of States still applied a maxi-

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except that such participation is limited to the amount of the average vendor medical payment, with a maximum of $15. Thus, the Federal maximum may extend to $85 times the number of of recipients. The Federal share in the excess expenditure consists of from 50 percent to 80 percent (depending on the State's per capita income). For States with average monthly payments of $70 or less, the additional Federal share in average vendor medical payments up to $15 is 15 percent. The additional Federal share of 15 percent also is available to States with average monthly payments over $70 when it is advantageous to them as an alternative to the method described above.

[4] For Guam, Puerto Rico, and the Virgin Islands, the matchable average payment is $37.50 per recipient in aid to the blind and aid to the permanently and totally disabled; $37.50 per recipient plus the amount above $37.50 spent for vendor medical payments up to $7.50 per recipient in old-age assistance; and $18 per recipient in aid to families with dependent children. For these jurisdictions, the provision for relating part of the Federal share to the fiscal capacity of the States does not apply. The Federal share is 50 percent of total payments within the specified maximums. There is also a limitation on the total amount of Federal funds that can be paid annually.

mum to the amount of the money payment made to individual recipients or to families. The number of States applying maximums as of that month was as follows: old-age assistance, 31; aid to the blind, 31; aid to families with dependent children, 29; and aid to the permanently and totally disable, 27.[5] Some States make exceptions to their maximums when recipients require medical care or have other special needs, and in some States maximums are high enough that they limit payments to relatively few recipients. Since the usual State maximums shown in tables 1 and 2 relate to money payments to recipients, they exclude the amounts of monthly premiums paid in behalf of recipients into pooled funds for medical care in States operating such funds, as well as other types of vendor medical payments in behalf of recipients.

*Reductions in Assistance Payments*

When States are unable to meet need as determined under their standards they reduce payments on a percentage or flat reduction basis (table 3). These types of limitations may be used in the absence of, or in conjunction with, legal or administrative maximums. A maximum limits the amount of assistance that may be paid to persons whose determined need exceeds that maximum, whereas percentage or flat reductions usually have the effect of lowering payments to most or all recipients to a level below that of determined need. In October 1962, percentage or flat reductions were being applied by 12 States to monthly payments under 26 programs. Three States applied such reductions to all four programs; one, to aid to families with dependent children, aid to the permanently and totally disabled, and aid to the blind; three, to aid to families with dependent children and aid to the permanently and totally disabled; and five, to aid to families with dependent children only.

[5] California has a maximum of $106 on the monthly payment to the individual recipient and in addition provides that total payments in a fiscal year may not exceed an average of $100 per recipient per month.

TABLE 2

## AID TO FAMILIES WITH DEPENDENT CHILDREN: USUAL MAXIMUMS ON MONEY PAYMENTS AND EXCEPTIONS TO SUCH MAXIMUMS, STATES HAVING MAXIMUMS, OCTOBER 1962[a]

| State | Usual Maximum Per Month For — Adults: First | Adults: Second | First Child | Each Additional Child | Family | Payments May Exceed Usual Maximum(s) For— |
|---|---|---|---|---|---|---|
| Alabama[a] | — | — | $32 | $23 | $124 | — |
| Alaska | $30 | — | 50 | 30 | — | — |
| Arizona | — | — | 80 | 27 | 220 | — |
| Arkansas: | | | | | | |
| With adult | 6 | — | 32 | 18-10-12-9 | 105 | — |
| No adult | — | — | 32 | 18-10-12-9 | 99 | — |
| California | — | $17 | 145 | 23-47-41-35-29-23-17-11-5 | — | Special needs if paid from local funds. |
| Delaware | — | — | 75 | 12-12-12-10-10-10-9 | 150 | — |
| Florida | — | — | 32 | 23 | 81 | — |
| Georgia | 25 | — | 34 | 25 | 134 | — |
| Indiana: | | | | | | |
| With adult | 32 | — | 32 | 23 | — | Medical care. |
| No adult | — | — | 50 | 23 | — | Medical care. |
| Kentucky[a] | — | — | — | — | 160 | — |
| Louisiana | — | (*) | 72 | 19-17-17-12-18 | 155 | Special needs, medical or dietetic—to $160. Special medical allowance for ill or handicapped child—to $255. |
| Maine | 32 | — | 32 | 30 | *250 | — |
| Maryland | — | — | — | — | *230 | Special items in emergency situations. |
| Michigan | (*) | (*) | (*) | (*) | 240 | — |
| Mississippi[a] | — | — | 25 | 15-10 | 90 | — |
| Missouri | *32 | — | 32 | 23 | — | Completely bedfast and totally disabled recipients—to $100. |

| | | | | | | |
|---|---|---|---|---|---|---|
| Nebraska | — | — | 100 | 15-15-15-10 | — | — |
| Nevada | 30 | — | 30 | 30 | — | 20 percent of unmet need. |
| New Mexico | — | — | — | — | 190 | — |
| Oklahoma | (6) | (6) | (6) | (6) | 238 | — |
| South Carolina | — | — | 27 | 18 | 99 | — |
| Tennessee: | | | | | | |
| With adult | 25 | — | 25 | 15 | 100 | — |
| No adult | — | — | 25 | 15 | 85 | — |
| Texas: | | | | | | |
| With adult | — | — | 54 | 22-18-13 | 107 | — |
| No adult | — | — | 35 | 26-23-19 | 107 | — |
| Utah | (6) | (6) | (6) | (6) | — | Hardship cases; restaurant meals, board and rooms, housekeeping services, nursing home care plus small allowance for personal needs—to specified higher maximums. |
| Vermont | 45 | — | 45 | 25 | — | — |
| Virginia[8] | — | — | — | — | 175 | Special needs if paid from local funds. |
| Washington[8] | — | — | — | — | 325 | Prevention of undue hardship. |
| West Virginia[8] | — | — | — | — | [9]165 | Recurrent items for chronic illness and expenses related to Community Works and Training Program. |
| Wyoming | (6) | (6) | (6) | (6) | 230 | — |

[1] September data for Arizona, Nevada and New Mexico.

[2] See table 3.

[3] If both parents (or parent substitutes) are included in assistance unit, the second parent only is given same consideration as an additional child in determining applicable maximum.

[4] Assistance plus other income cannot exceed $300.

[5] Represents maximum in highest of three cost areas in State; other maximums are $220 and $210.

[6] Maximums expressed in terms of number of persons in assistance unit as follows: for Michigan 1 or 2 persons $120, each additional person $20 to family maximum of $240; for Oklahoma from 1-9 or more—$32, $114, $141, $163, $185, $202, $218, $231, $238; for Utah for all assistance in cases of 1-10 persons—$81, $130, $154, $174, $194, $213, $232, $245, $258, $272; for cases with more than 10 persons, $272 plus $13 for each person in excess of 10; and for Wyoming 1—$100, 2—$170, 3 or 4—$200, 5, 6, 7—$215, 8 or more $230.

[7] When there is an employable person in the household, payment is limited to maximum based on number of eligible children in the case.

[8] Represents household maximum for related persons.

EXHIBIT D

Interim Policy

May 31, 1968

Need — Requirements
For State Public Assistance Plans

*Table of Contents*

A. General

B. Standards of Assistance

C. Income and Resources — OAA, AFDC, AB, APTD, AABD

D. Disregard of Income Common To OAA, AFDC, AB, APTD, or AABD

E. Disregard of Earned Income — Definition

F. Disregard of Earned Income Applicable Only to OAA, APTD, or AABD

G. Disregard of Income and Resources Applicable Only to APTD and AABD

H. Disregard of Income and Resources Applicable Only to AB, and AABD

I. Disregard of Income Applicable only to AFDC

U. S. Department of Health, Education, and Welfare
Social and Rehabilitation Service
Office of the Administrator

Interim Policy

3. Requirements for State Plans:

A State plan for OAA, AFDC, AB, APTD or AABD must, as specified below:

A. *General:*

Provide that the determination of need and amount of assistance for all applicants and recipients will be made on an objective and equitable basis and all types of income will be taken into consideration in the same way, except where specifically authorized by Federal statute.

B. *Standards of Assistance:*

1. Specify a State-wide standard, expressed in money amounts, to be used in determining (i) the need of applicants and recipients and (ii) the amount of the assistance payment.
2. Provide that by July 1, 1969, a State's standard of assistance for the AFDC program will have been adjusted to reflect fully changes in living costs since such standards were established, and any maximums that the State imposes on the amount of aid paid to families will have been proportionately adjusted.
3. Provide that the standard will be uniformly applied throughout the State.
4. Include the method used in determining needs, which must be one of the three methods described in "Guides and Recommendations" or a comparable method which meets the conditions specified in such guides and is approved by the Assistance Payments Administration.

* * * * * *

*United States District Court For The District of Maryland*

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Excerpts from

EXHIBIT E TO DEFENDANT'S "MEMORANDUM IN SUPPORT OF MOTION TO AMEND FINDINGS OF FACT AND JUDGMENT OR IN THE ALTERNATIVE TO TAKE ADDITIONAL TESTIMONY, OR FOR A NEW TRIAL OR IN THE ALTERNATIVE TO ALTER OR AMEND THE JUDGMENT". Excerpts from minutes of State Board of Public Welfare Meetings (full text of minutes is part of record on appeal).

Excerpts from meeting of February 2, 1945
(minutes, pages 5 and 6)

XIX. Amendments to Public Assistance Laws suggested by City Department Advisory Board.

The Director reported that the Advisory Board of the City Department had suggested ten amendments for changes in the Public Assistance laws, and the Director of the City Department had written that "it would give a great deal of satisfaction to our Board to sit down to discuss these suggestions with you and your Board at any convenient time." Briefly summarized, these suggestions are as follows:

1. Removal of ceilings from OAA, ADC and ANB
2. Change of residence requirements for OAA to that for GPA
3. Repeal of provision requiring U. S. citizenship
4. Shifting risk of fluctuating payments and enforcement of court order to the State, and not the applicant, with respect to support of parents by children.
5. Granting ADC to any child in distressing financial need, instead of to those children now specifically mentioned in the laws; subject, however, to provision that it should be given only to the family where there are no work opportunities available to the employable members.
6. Changing the ADC law to permit grants to children in need, and not limiting them to children living with certain relatives
7. System of Equalization as between State grants to local units
8. Public Assistance program without categories, but based upon actual needs of individuals. (They recognize that such program would have to be initiated by the Federal Government in changing provisions of the Social Security Act)
9. Pending abolition of categories, participation by Federal Government in all categories.
10. 1-year residence requirement for Public Assistance — to be accomplished by cooperative action among various states.

Judge Waxter was informed that the legislation sponsored by this Department had been submitted to the Legislative Council and discussed with local executives and chairmen at their meeting last Spring, and copies mailed to all local departments; and, further, that bills have been introduced in the Legislature covering these recommendations, with a few exceptions.

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Excerpts from meeting of April 11, 1958
(minutes, page 2)

6. Report Re: Eliminating $180 Ceiling on Assistance Grants

A report was given on the overall $180 ceiling on assistance grants. A copy of the written report is filed with the original of these minutes. The matter was discussed at length by the Board. It was pointed out that it would cost an estimated $76,200 a year in State money to remove the ceiling. No action was taken, but the matter was to be discussed with the Governor.

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Excerpts from meeting of August 22, 1958
(minutes, pages 1 and 2)

5. Report Re: Eliminating Maximum Amount of Assistance Grants

The matter of the $180 maximum on assistance grants was considered. A circular letter had been sent to each of the local welfare departments asking their opinion as to what should be done about the $180 maximum. Of the twenty replying:

a. Twelve favor elimination of any maximum, believing the standards represent maximum enough. (Allegany, Anne Arundel, Baltimore City, Calvert, Caroline, Frederick, Harford, Kent, Montgomery, Queen Anne's, St. Mary's, Washington)

b. Eight question the removal of a ceiling, but it is interesting that most of these give as a reason the

fact that none of their cases now exceed the present or recommended ceiling. Three (Worcester, Somerset and Dorchester) recommend keeping the present ceiling. Four (Baltimore, Charles, Garrett and Prince George's Counties) recommend raising it to $200. One (Carroll) recommends raising it to $210.

On the basis of the above the Board directed the staff of the Department to consider the matter and to bring back to the September meeting a recommendation for a higher ceiling, or alternative recommendations if the same seems desirable.

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Excerpts from meeting of September 26, 1958
(minutes, page 1)

3. Proposals Re: Maximum Amount on public Assistance Grants — Revision of Rule 200 (II)
There was distributed to the members a memo setting out four proposals dealing with the maximum public assistance grants to families, copy of which is filed with the original of these minutes. After full discussion the Board unanimously adopted, on motion made and carried, the fourth proposal, which increased the maximum allowable in any one grant from the present $180 to $210 under Plan A; $200 under Plan B; and $190 under Plan C, depending upon the local units. That is, the highest cost areas such as Baltimore City and the large metropolitan areas would have a ceiling of $210, etc. The effective date of this increase is November 1, 1958, and involves revision in Rule 200 (II), copy of which is filed with the original of these minutes, and which is to be issued subject to the approval of the Attorney General as to legality.

* * * * * *

Attachments to minutes of meeting of September 26, 1958
Prepared for State Board — 9/26/58

Re: Maximum amount on Public Assistance Grant

Following are 4 possibilities to be considered:

1. Under increase in Standards already approved and issued to be effective 10/1/58, the maximum would be raised from

   $180 to *$185*

   Additional Monthly *Cost*: (already included in estimate for increased standards)

2. Since standards set a maximum based on need; since the majority of local departments recommend elimination of any overall maximum; and since the 1960 budget request is based on no maximum it is recommended that there be *no maximum.*

   *Additional *Monthly Cost*: *$7,000* Total *$3,500* State

3. The majority of families are 10 or under. Basic needs (without special diets if needed) for a family of 10 would amount to:

| | Plan A | B | C |
|---|---|---|---|
| Subsistence | $185.00 | $184.00 | $179.50 |
| Shelter (Max.) | 45.00 | 31.00 | 25.00 |
| School Supplies & Ins. Prem. | 5.00 | 5.00 | 5.00 |
| | $235.00 | $220.00 | $209.50 |
| Max. rounded off to $10 intervals | *$240* | *$220* | *$210* |

   *Additional *Monthly Cost*: *$6,550* Total *$3,275* State

4. Of the families receiving the present maximum about 1/3 have 9 or more persons. Basic needs for a family of 8 would amount to:

| | Plan A | B | C |
|---|---|---|---|
| Subsistence | $158.50 | $157.50 | $153.00 |
| Shelter (Max.) | 45.00 | 31.00 | 25.00 |
| School Supplies & Ins. Prem. | 4.00 | 4.00 | 4.00 |
| | $207.50 | $192.50 | $182.00 |

| | | | |
|---|---|---|---|
| Max. rounded off to $10 intervals | *$210* | *$200* | *$190* |
| *Additional *Monthly Cost*: | *$4,900* Total | | *$2,450* State |

* Cost estimates are approximate since we only know how many are at maximum and not how much "need" might be over the maximum. Total cost for this fiscal year would depend on effective date of any change and when the change became effective on all cases now at maximum.

Maryland State Planning Commission Newsletter for September 1958 gives for each County amount of "disposable income (income after taxes) per household" for 1957. These average from $4,158 annually in Queen Anne's to $9,381 annually in Montgomery. The percentage of households with incomes (after taxes) under $2,500 ranges from 8.5% in Montgomery to 31.7% in Queen Anne's. The Eastern Shore counties, Calvert and Garrett have about 25% of households under $2,500. These figures do not take into account income in kind, such as is generally available to farm families.

Therefore, it appears that none of the proposals would set a maximum out of line with household incomes throughout the State.

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For Consideration — 1960 Budget
State Board, Friday, July 18, 1958

For Public Assistance standards the following items need to be considered (Percentage increases in items, based on Cost of Living Index figures):

1. Change-over to new basis for food standards as proposed for 1959 Budget brought up to May 1958 prices. (Cost of Living Index for food shows 15.2% increase over December 1950 prices. For current standards this leaves 13.2% increase in addition to the 2% allowed in the 1959 budget.) This is based on latest

material from U. S. Department of Agriculture after research in food consumption patterns of low and moderate income families. This change-over would increase average grant about $5.50.

| | *Total* | *State Funds* |
|---|---|---|
| Estimated annual cost based on June caseload | *$3,054,000* | *$1,975,000* |
| 2. Shelter costs increased 5.7% | | |
| Estimated annual cost based on June caseload | *$ 58,000* | *$ 35,000* |
| 3. Utilities increased less than 3% — no action recommended. | | |
| 4. Clothing and personal care costs increased since last adjustment. | | |
| Apparel — 8.7%; Personal care items — 29.4%. | | |
| Estimated annual cost based on June caseload | *$ 395,000* | *$ 268,000* |
| 5. School supplies — review of costs since last standard (1951) was set would indicate need to increase for elementary school child from $.25 to $.50 monthly; and for junior and senior high school child from $.50 to $1.00 monthly. This would amount to an average of about $.15 per ADC recipient. | | |
| Estimated annual cost based on June caseload | *$ 54,000* | *$ 40,000* |
| 6. Maximum amount of $180.00 — A circular letter has been sent to get opinion of each local welfare board. Replies | | |

| | | |
|---|---|---|
| are not due until July 31st in order to give all boards a chance to consider it. Of 8 local departments replying: 5 recommend elimination of the maximum (Calvert, Kent, Frederick, Montgomery and Anne Arundel); 2 recommend no change in present maximum (Worcester, and Somerset); and 1 recommends keeping a maximum but increasing the present one to $210 (Carroll). | | |
| Estimated annual cost to eliminate based on June caseload | *$ 76,750* | *$ 76,750* |

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State Department of Public Welfare

To: Miss Howlett

From: Nina Dressel Date: July 17, 1958

Subject: Maximum Grant — Estimate of Cost for Removal of Maximum

The estimate of $76,200 per year made in March 1958 was based on an average monthly caseload of 7,162 assisted families (the number of families assisted in February).

In June 7,399 ADC families were assisted. This is an increase of 3.3% in estimated number of cases affected by removal of the "maximum". This then would increase the annual cost by $2,515 or $77,715 in all.

The above amounts represent State funds. The increase raises the average grant per recipient by $0.42 (or 21¢ in State funds) assuming Federal participation.

March 21, 1958

To: Mr. Waxter

From: Miss Howlett

$180 Maximum On Assistance Grants—Your Memo of 3/12/58

*History*

1936 to 1946

The history with regard to maximum amounts begins with our holding to the federal maximum. As GPA was made available in the local departments there began to be supplementation of such maximum amounts. In 1946 we discontinued holding to the federal ADC maximum which in effect did away with "supplementation to ADC". We had meantime established uniform standards state-wide.

1947 to 1952

Due to limitation of funds beginning July 1, 1947, we issued uniform standards and included maximum amounts for ADC and GPA families by size of family running up to $170 as the maximum for any size family. In June 1948 we set forth these maximum amounts by local department as being a more fair way of distributing the effect of inability to meet full standards. The most restrictive was when we had the maximum amounts by local department and by size of family. The maximum on categories other than ADC remained at $55 with the exception of cases needing nursing care. As funds were available to relieve the maximum amounts, we went back to an over-all ADC maximum but set by groups of local departments. In December 1950 these ranged from $120 to $150. In January 1952 we changed to three groupings with the ADC maximum ranging from $145 to $165. In September 1952 we set for the first time an over-all maximum of $175 on any assistance grant. This for the first time did away with the federal maximum for APTD, OAA, PANB, pointing out that the needy spouse or others would no longer have to receive GPA and it would be a saving administratively as well as assuring the fullest benefit from federal matching.

1952 to Present

This policy of one over-all maximum has been followed since 1952, the amount being raised to $180 when we increased standards in 1956. The amount for an over-all maximum was determined in relation to information about wages. We last reviewed this in August 1957 finding that the State average weekly wage was $72.20 or about $310 monthly. The lowest average weekly wage was $36.79 ($158 monthly) in Somerset County and the highest $87.93 ($378 monthly) in Baltimore County. This information came from the Maryland State Department of Employment Security as figured for "State Insured Employment" from July 1955 — June 1956.

A maximum does leave certain families, either because of size or special needs, without the money necessary to get proper food, shelter and other items. On the other hand there is considerable reaction to an assistance grant being above what some families are able to earn with similar situation as to size and special needs.

*Estimate of Cost*

Mrs. Dressel estimates that to eliminate the maximum would cost a total of $9,015 monthly from all funds or $6,350 monthly in State funds. This is based on the February 1958 caseloads.

Although we do not have specific information as to how much above $180 grants would go, we do know the number of families whose present grants are at $180 and therefore assume they would go above if the ceiling was lifted. As of September 1957 there were 272 such ADC cases throughout the State. The majority were cases with 6 or 7 children in addition to 1 or both parents. (88 families with 6 children and 78 families with 7 children). The largest families (6) had 11 children and 11 families had 10 children.

If we take the largest family reported, 11 children and 2 adults, the grant under current standards would come to about $252 in A local departments; $245 in B; and $234 in

C. If any of these needed special diets such as for malnutrition it is possible that such grants would amount to $300 or more.

For the 6-child family the present standards exclusive of special needs such as special diets, would not put the grant much above the maximum. For A counties about $198; for B counties $189 and for C counties $180. These amounts of course would increase with any increase in basic standards.

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State Department of Public Welfare

To: Miss Howlett March 14, 1958

From: Nina Dressel

Re: Maximum Grants — Estimate of Cost for Removal of Maximum

In September 1957, there were a total of 272 ADC families receiving the maximum grant of $180. (There were a few families which received more than $180.00 for emergency reasons.) We would not know whether any of the 272 received emergency grants during September or whether the full grant was $180.00 and consequently would not be affected by removal of the maximum. There was a one-child case in Baltimore City and a 3-child case in Baltimore County which could not receive more than $180.00 by our standards, unless we included both parents, insurance, school supplies, laundry, and special diets for every member of the family.

Number of Families Receiving $180.00 in September 1957

| | |
|---|---|
| Total number | 272 |
| Number of families with one or two adults | 269 |
| Having 1 child | 1 |
| " 3 children | 1 |
| " 4 " | 3 |

| | |
|---|---|
| Having 5 children | 24 |
| " 6 " | 88 |
| " 7 " | 78 |
| " 8 " | 34 |
| " 9 " | 23 |
| " 10 " | 11 |
| " 11 " | 6 |
| Number of families with no eligible adult | 3 |
| Having 7 children | 2 |
| " 11 " | 1 |

Estimated Increase in Cost to Remove Maximum

If estimate is based on the September 1957 Distribution of Payments and the following assumptions the total cost per month from all funds would be $9,015:

1. All cases received the maximum for shelter, insurance, and school supplies.
2. Both parents included in the grant.
3. No additional allowance for special diets or laundry.
4. Number of cases affected by maximum would be increased by 8% (the increase in number of ADC cases in February 1958 over September 1957).

There should be Federal matching in one-half of the increase for all families having 7 or more children; this would reduce the cost per month in State funds to approximately $6,350, or $76,200 per year for an average monthly caseload of 7,162 assisted families.

If we could assume that there would be only one parent in these cases and no allowances made for special diets or laundry, the increase in cost per month for 7,162 families might be as low as $5,225 with Federal participation in one-half of it — a cost in State funds of $2,613.

Therefore the estimated increase would range from a minimum of $2,615 to $6,350 per month in State funds for the February 1958 caseload.

State Department of Public Welfare

March 12, 1958

From: Mr. Waxter

To: Miss Smith
Mr. Hunt
Miss Howlett
Miss Olson
Miss E. Lankford

Re: Development of Material

As a result of our discussion this morning, it is my understanding that we will develop as rapidly as possible the following material:

1. Miss Howlett is to estimate the money involved in removing the $180 ceiling on assistance grants. She will also give us the background and justification for the ceiling.
2. Miss Olson will discuss with Mr. McManus the material that the private agencies want as to cost incurred by the Department of Welfare in child placement. This involves not only cash payments, etc. to foster parents, but also the possibility of service costs exclusive of administration.
3. Miss Olson is to find out the cost of permitting private agencies supplementation of purchase of care rates paid to institutions for particular children needing special care. She is also to develop the philosophic base of the present Rule which forbids such supplementation.

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State Department of Public Welfare

To: Miss Smith Date: 8/26/57

From: Nina Dressel

Subject: Farm Wages — Mr. Forsythe's Material on Farm Wages 1956

Seasonal Planting and Harvesting of crops —
Wage: 75 cents to $1.00 per hour

Farm hand (usually a single man who gets room and board in employee's house) — approx. $35 per week.

Year-round farm workers (married men with families) get approx. $160 per month plus house and electricity plus some other extras such as milk and eggs, hog meat, etc. ($160 is most usual figure given; range is $150 — $200).

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State Department of Public Welfare

August 26, 1957

To: Miss Smith

From: Nina Dressel

Re: Weekly Earnings in Employment

The average weekly wage for state-insured employment from July 1955-June 1956 was $72.20 for the State.

The average weekly wage for state-insured employment ranged from $36.79 in Somerset County to $87.93 in Baltimore County from July 1955-June 1956. The average weekly wage by local unit was:

| | |
|---|---|
| Allegany | $67.82 |
| Anne Arundel | 70.55 |
| Baltimore | 87.93 |
| Calvert* | 46.08 |
| Caroline* | 50.26 |
| Carroll | 55.45 |
| Cecil | 58.69 |
| Charles* | 56.48 |
| Dorchester | 46.86 |
| Frederick | 53.57 |
| Garrett* | 46.15 |
| Harford | 57.09 |
| Howard* | 57.78 |
| Kent* | 46.83 |
| Montgomery | 67.65 |

| | |
|---|---|
| Prince George's | 69.29 |
| Queen Anne's* | 43.02 |
| St. Mary's | 49.90 |
| Somerset* | 36.79 |
| Talbot* | 49.33 |
| Washington | 71.76 |
| Wicomico | 55.73 |
| Worcester | 46.23 |
| Baltimore City | $73.38 |
| State | $72.20 |

* The shelter allowance would be $6. a month (or $1.38 per week) less than the budgets for Plan B departments.

In June 1957 the average weekly earnings for production workers in manufacturing industry in the State was $83.62 — an increase of $4.16 over the average weekly earnings in June 1956.

Source: Maryland State Department of Employment Security.

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State Department of Public Welfare

Date: August 26, 1958

To: Miss Howlett

From: Mr. Waxter

Subject: Maximum Amount on Public Assistance Grants

I reported to the Board at the meeting on August 22nd, the replies received from local welfare departments re elimination of the maximum amount on public assistance grants, as set out in your memo of August 15th.

The State Board directed that we bring back to the September meeting a recommendation for a higher ceiling, or alternative recommendations if, after consideration, the same seems desirable.

August 15, 1958

To: Mr. Waxter

From: Miss Howlett
Elimination of Maximum Amount on Public Assistance grants — Local Department Replies

The circular letter of 6/27/58 asks for local welfare board opinion about removal of maximum amounts ($180 and $100 GPA-E).

Cecil and Wicomico have not replied. Howard and Talbot have not been able to clear it with Board and therefore, have sent no opinion. All other local departments have replied expressing some opinion, although a few indicate that they will discuss it further when they can have full Board meetings (Charles, Kent, Washington).

1. *Removal of $180 maximum.*

   Of the twenty replying:

   a. Twelve favor elimination of any maximum believing the standards represent maximum enough. (Allegany, Anne Arundel, Baltimore City, Calvert, Caroline, Frederick, Harford, Kent, Montgomery, Queen Anne's, St. Mary's and Washington).

   b. Eight question the removal of a ceiling, but it's interesting that most of these give as a reason the fact that none of their cases now exceed the present or recommended ceiling. Three (Worcester, Somerset and Dorchester) recommend keeping the present ceiling. Four (Baltimore County, Charles, Garrett and Prince George's) recommend raising it to $200. One (Carroll County) recommends raising it to $210.

It seems to me that those which see keeping a ceiling but have all cases within the ceiling are in effect wanting families to receive full need, but still have some psychological reason for having a ceiling in the policy.

2. *Removal of $100 maximum on GPA-E.*

   a. Since most local departments aren't administering this, they made no specific comment. However,

five (Anne Arundel, Frederick, Harford, Montgomery and Queen Anne's) thought it should be eliminated completely on the same basis as elimination of any maximum.

b. Baltimore City thought we should eliminate a ceiling but limit the standards to the essentials of food, shelter and household maintenance, omitting any allowance for clothing and other items. Dorchester believed the maximum should be raised to the $180 which they also want to keep for any grant.

c. Two counties (Baltimore and Caroline) believe the present maximum of $100 should be kept.

*Note* — I am referring on to Mr. Hodes those replies which included some estimate of cost if the GPA-E maximum is raised from $100 to $180. I assume he will prepare the estimates you may want for further consideration of this by Board.

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State Department of Public Welfare

June 27, 1958

To: Directors, Welfare Departments

Re: Maximum Amounts on Public Assistance Grants

1 — $180. Maximum (all categories but GPA-E)

At the State-wide meeting in April, it was suggested that local boards consider further the $180 maximum. In planning for preparation of the 1960 budget, we would like to have from all local boards some opinion about this. Will each local director consider this with Board and let us know what the opinion of each Board may be.

Since 1952 we have had one overall maximum on an assistance grant, thinking that an assistance grant should not go higher than the lower wages in a community. Figures from the Maryland State Department of Employment Security show State average weekly wage of $72.20

or about $310 monthly. This is based on figures for "State insured employment" from July, 1955 to June, 1956.

There is no doubt that a maximum leaves certain families without money necessary to get proper food, shelter and other items. This is either because of the size of the family or special need. Assistance standards themselves set a maximum and are based on what would be considered minimum adequacy for each size family.

Would your board recommend doing away completely with the overall maximum? If not, what maximum do they believe would be appropriate? Would you give us some brief statement of the basis for any recommendation you make. Attached is a letter from the Maryland Commission for the Prevention and Treatment of Juvenile Delinquency which may be of interest to your board.

2 — $100. Maximum (GPA-E)

With the recent unemployment situation and families needing GPA-E for a longer period of time, the $100 maximum has seemed to work considerable hardship on some families. The question is whether we should control this by the same maximum applicable to other categories.

Will *those local departments now granting GPA-E* give us information with regard to this ceiling. Let us know not only your opinion about continuing the present maximum but also an estimate of what additional costs there would be on your present cases if there was not a maximum. This would mean taking any current recipients or possibly using those who received an amount in May and estimating additional costs if there had been $180 rather than $100 maximum.

May we have your replies by July 31.

Sincerely yours,

THOMAS J. S. WAXTER,
Director.

Maryland Commission for the Prevention and
Treatment of Juvenile Delinquency
120 West Redwood Street
Baltimore - 1, Maryland

June 20, 1958

Dr. Alvin Thalheimer, Chairman
State Board of Public Welfare
American Building
Baltimore 2, Maryland

Dear Dr. Thalheimer:

On March 10, 1958 you wrote us that the State Board of Public Welfare is giving consideration to the State Commission's recommendation concerned with elimination of the $180.00 ceiling on ADC grants.

We would appreciate it very much if you could inform us whether the State Board has taken any action in the meantime. We are extremely concerned with the effects of the existing policy on the children of larger families depending on public assistance for their livelihood.

As of September 1957, 272 families in Maryland were affected by this ruling last year. The number of children included in these substandard grants was 1790. The result is alarming. It really means that this policy deprived 1790 children of essentials for their normal development.

You stated in your letter that the whole matter of ceilings on grants is a very delicate one and one to which a good deal of attention has been directed. We believe very strongly that when families have been found eligible for public assistance, they should receive the whole amount to which they are entitled according to the standards for subsistence, for rent and for any others items which may be included in their budget. We feel that the Public Welfare Department should not be handicapped in setting its policies by those forces in the community which, out of ignorance, selfish interests or prejudice, may want to deny the very minimum of economic security to the poorest

families in our midst. Perhaps the State Board, together with the local boards, would want to consider a program of educating the community and of illustrating effectively the detrimental results of this policy.

I think we all agree that economic hardship is one of the causes of family breakdown and that the serious deprivation which the children of these families suffer is a contributing factor to juvenile delinquency. It ultimately costs the community and the State far more to try to remedy the effects of this policy than it would cost to give these families the full public assistance grants due to them.

The members of Action Committee I feel so strongly about this matter that we would appreciate it if the State Board could give us some time to discuss this problem. I am certain that the State Commission as a whole will stand ready to help the State Board in every way possible to affect a change of the present policy.

Very sincerely yours,

/s/ F. Reid Isaac,
Dr. F. Reid Isaac, Chairman,
Action Committee I.

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March 10, 1958

Dr. F. Reid Isaac, Chairman
Action Committee I
Maryland Commission for the Prevention and
Treatment of Juvenile Delinquency
120 West Redwood Street
Baltimore - 1, Maryland

Dear Dr. Isaac:

Under date of February 24th you wrote as Chairman of a Committee of the Maryland Commission for the Prevention and Treatment of Juvenile Delinquency, relative to the matter of the ceiling of $180 on public assistance grants, and suggested that the Board of the State Department of Public Welfare reconsider this policy.

First let me thank you for the interest that your Committee has in this problem. Consideration will be given to it, and the Board is having prepared certain material as to costs, etc.

The whole mater of ceilings on the grants is a very delicate one, and one to which a good deal of attention has been directed.

The Board has asked me to advise you of its interest and to thank you for writing.

Sincerely,

DR. ALVIN THALHEIMER, Chairman
State Board of Public Welfare.

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EXHIBIT F

Report

of the

Legislative Council Committee

on

Public Welfare Cost

October, 1966

Welfare Committee Report

*Purpose:*

This Committee was appointed last year to determine the reasons for the rapid rise in welfare costs and to recommend the ways and means by which those rising costs could be reduced without depriving deserving individuals or families of public assistance. As a result of its findings and recommendations and the passage of Senate Joint Resolution No. 47 by the 1966 General Assembly, it was reappointed to continue its surveillance of the State Welfare program and to "consider changes in Federal welfare requirements to allow the States to make reasonable inquiry into the use made by welfare recipients of the monies paid

to them for welfare assistance." When and if changes to federal regulations had been determined, the Committee was to meet with the Maryland Senators and Congressmen to obtain their aid in implementing the changes.

*Action Taken:*

The Committee met six times to hear testimony pertinent to its objective and held a final meeting to review its findings and decide upon the action it would recommend to the Legislative Council.

*Findings:*

Present federal regulations prohibit the State Department of Public Welfare from requiring welfare recipients to spend public assistance monies for the purposes intended. (Exhibit A). Should such action be taken by the State Department of Public Welfare, federal funds would be withheld from the State.

The suspicion that many welfare recipients were spending public assistance payments for things other than food, rent, and clothing was explored and in some cases found to be justified. (Exhibits B, C, and D).

The public assistance payments to welfare recipients are, in some instances, inadequate to their needs, particularly housing. This forces the recipient to spend a part of his food and clothing allowances for rent. Although this might be applied to all welfare categories, particularly in Baltimore City, it is obviously true of the larger families receiving public assistance under the Aid to Families with Dependent Children (AFDC). This was supported by the information given to the Committee by the organization of welfare mothers known as "The Rescuers from Poverty." Their statement of actual costs, the State Department of Public Welfare estimate of their needs, and the allowance authorized are shown in Exhibit E. In addition, the welfare mothers requested a special clothing allowance for themselves and their children three times a year, claiming the present allowance was inadequate, particularly prior to be-

ginning the school term. They consider the Donable Foods program inadequate to their needs and request the establishment of a Food Stamp program which would enable them to purchase fresh food at a discount. They want training as social workers, teachers, and community organizers. They want investigations by the welfare workers stopped and the abolition of the prohibition against having a boyfriend. They want payments twice a month instead of once a month.

The Welfare Department, in response to a suggestion that the cycle of dependency upon welfare might be broken if the children could be placed in foster homes, stated that the present average payment of $82 per child in the City and $72 in the Counties was inadequate to attract more foster parents into the program. This was stated as being particularly true in the case of teenagers. In the opinion of the Welfare Department this foster care allowance should be increased to $78 per month per child under 6 years old; $99 per month per child between 6 and 12 years old; $114 per month per child over 12 years old.

Welfare Department officials stated that the present limit on the amount of earnings welfare recipients may retain is inhibiting their return to full employment status. At present this amounts to $10 per month above the total amount estimated by the Welfare Department as their minimum required plus expenses (lunches, carfare, etc.). Attempts to increase this have met with objections at the Federal level where Health, Education, and Welfare officials claim that increasing the retention of earned income by welfare recipients will increase Federal costs because the HEW estimates of Federal cost are predicated upon the assumption that a certain amount of earned income will offset the Federal and State costs.

Members of the Board of Welfare and the Welfare Department feel that it would encourage more people to seek employment if they were able to retain more of their earnings than the present $10 per month to augment the Department's estimate of their minimum needs.

Birth control, or Planned Parenthood, information is disseminated to all AFDC parents by the social workers. A birth control clinic has not been established because of the lack of funds. Even if one or more clinics were established, welfare clients could not be required to use such facilities even when the mother had given birth to several illegitimate children.

Rehabilitation Training under Title V of the Social Security Act is proving to be successful in the training of nurses aides, gardeners, etc. but Day Care Centers are needed to care for the children involved. The Welfare Department will request additional funds in their 1968 Budget request to establish more Day Care Centers. In the meantime, they are encouraging some mothers on AFDC to care for the children of other mothers on AFDC who are either in training or employed.

Individuals receiving assistance under the General Public Assistance program are those who have some type of physical disability which prevents them from taking employment. The disabilities consist of tuberculosis, alcoholism, paralysis, epilepsy, etc. These individuals are being re-examined now that the fee has been increased from $2.50 to $10.00 and a statistical profile is being prepared to show the percentage in each type of disability. Those no longer disabled will be placed in the "General Public Assistance — Employable" category and will be required to register for employment with the Maryland State Employment Service. Their status will be reviewed monthly before each check is issued to them.

Positive identification of welfare recipients through the use of Social Security numbers on IBM cards to prevent duplicate payments is being evaluated by the Consultant Firm of Booz, Allen and Hamilton. They are to develop a procedure to minimize the probability of duplication of welfare payments through the use of IBM control cards.

Representatives of property owners renting to welfare recipients claimed that the present $45 maximum allowance for rent is inadequate. They pointed out that this

amount was inadequate to provide housing for a family of five or more people, maintain the property, pay taxes, make modifications directed by City Inspectors and to make a reasonable profit on their investment. In addition, the losses due to damages to their property by irresponsible welfare recipients for which they could not obtain reimbursement and the losses incurred when welfare clients moved without notice and without paying the rent further aggravated their problem. They were unable to collect for such damages because the individual had no resources and were unable in many cases to learn of the whereabouts of the individual from the Welfare Department.

They recommended that the Department of Welfare make direct payments to the landlords of welfare recipients and that the rental allowance be increased commensurate with the size of the family.

The Department of Welfare pointed out that they cannot, under existing federal regulations, make money payments for housing direct to the landlords; these must go to the welfare recipient. Neither can they reveal the whereabouts of welfare clients to anyone other than certain State officials except by order of a court.

The State Commissioner of Health explained the effect of the Medicare Amendment to the Social Security Act as it applies to the Welfare Department. Prior to the Medicare Amendment, the Health Department provided hospitalization and medical care to welfare recipients and presented the bills to the Welfare Department for reimbursement. The Welfare Department transferred the necessary funds to the Health Department and obtained 50% reimbursement from the U. S. Department of Health, Education and Welfare. In other words, the Department of Welfare included the cost of hospitalization and medical care in its annual budget and transferred the funds as required to the Health Department.

Under Medicare, the Department of Welfare will continue to certify welfare recipients as eligible for free hospitalization and medical care but the Department of Health

will pay the bills and obtain the reimbursement from the U. S. Department of Health, Education and Welfare. This will result in a reduction in the budget request of the Department of Welfare and an increase in the budget request of the Department of Health.

Since the reimbursement for such care requires that the care be provided by hospitals meeting the accreditation standards and some of the State Tuberculosis and Chronic Disease hospitals involved may be marginal in this respect, the Commissioner of Health is maintaining close surveillance over the program and maintaining tight liaison with the Regional Office of the U. S. Department of HEW at Charlottesville, Virginia.

In the opinion of the Commissioner of Health, the increased costs of providing the more economical medical care to more poor families will eventually result in the reduction in the more expensive hospitalization costs.

Detection of and prosecution for fraud will be handled by two Attorneys assigned to the Department of Health.

The Department of Welfare reported on the progress they have made in implementing the recommendations of the Booz, Allen and Hamilton report. As rapidly as they can locate qualified individuals for the recommended positions, they are initiating personnel action to employ them. As rapidly as they obtain the qualified personnel, they are establishing functions designed to collect basic data they need to measure the impact of all welfare programs and to determine the efficiency of the management of each. For example, they are responsible for helping individuals and families to become self-supporting, through retraining if necessary yet they have not been able to obtain the basic information as to what the individuals' educational levels are, what aptitudes they have, and what they should be trained in. The additional positions and procedures recommended in the Booz, Allen and Hamilton report will enable them to obtain the information and establish the procedures they need to effectively manage the program.

The Department of Welfare recommended that the bill which failed of passage in the last Session of the General Assembly (H.B. 1207 plus two amendments) because of the lack of time be proposed for passage during the next Legislative Session.

The State Fiscal Research Bureau discussed the matter of aptitude testing, training, and employment of welfare recipients with representatives of the Maryland State Employment Service and presented the Committee with the following results:

a. Testing for education level is done in groups of 10 to 15 individuals at a time and takes 2 to 3 hours.

b. Aptitude testing including counselling to motivate individuals to take training is done on an individual basis and takes longer than testing for educational level.

c. Motivating individuals to take training indicated by educational and aptitude tests is difficult because the individual desires training for "white collar" jobs whereas his test indicates he is insufficiently prepared to absorb such training.

d. As of May 1966 there were 3,752 job openings of all kinds in the Baltimore Metropolitan Area. This is estimated by the Maryland State Employment Service to represent not more than 20% of all jobs available in the area. On this basis, the maximum number of jobs available in the Baltimore area would be 18,760. At the same time there were 26,000 individuals unemployed looking for work in the same area. If all the AFDC parents in the Baltimore area were trained in all the categories of the available jobs ranging from Engineers to Waitresses, there would not be enough jobs available to employ all of them.

e. Because of the difficulty in motivating people to take training for which they are qualified, Maryland

State Employment Service suggested that the Department of Welfare segregate those who are on welfare for the first time and obtain volunteers for testing, counselling and training by Maryland State Employment Service in small groups to increase the probability of success.

f. Past experience of Maryland State Employment Service in this training of youths indicates a need for change in some areas. They trained a group of 16 young men as nurseymen and, in accordance with the Federal instructions, paid them $1.25 per hour during training. On completion of the training the graduates could not find employment with nurseries at more than $1.00 per hour. Needless to say, this experience didn't encourage more people to take such training.

A summary of the status of fathers of AFDC families indicates the following:

| *Status* | *% of Total* |
|---|---|
| Unemployed | 5.0 |
| Deceased | 6.3 |
| Incapacitated | 18.5 |
| Divorced or separated legally | 5.0 |
| Separated without court decree | 14.0 |
| Deserting | 15.2 |
| Not married to mother | 31.3 |
| Imprisoned | 4.7 |
| | 100.0 |

The State Department of Welfare reports that there is no recovery of funds spent in the AFDC category except through the Old Age Security Insurance due a deceased parent and from Court action through their Probation De-

partments. This amounted to $1,808,600 in Fiscal Year 1966, when the Welfare Department paid out $43,499,393 including administrative costs for AFDC.

The Committee was told by one of the members of "The Rescuers from Poverty" that she had gone to the Probation Department to get them to help her collect $1,100 overdue on child support payments. They collected $200 and told her to request help from the Welfare Department. She said that she would not be on the Welfare rolls if she could collect the $55 a week her ex-husband was ordered to pay her for the support of their 3 children.

After two years of hearings, the Committee finds itself unable to recommend any specific action which would cause an immediate reduction in the present costs of public welfare without injury to recipients who should be given public assistance. There are, however, some areas in which proper aggressive action can be taken which should result in slowing down the rate of rise.

No reasonable individual would deny help to the elderly, the blind, the disabled, the orphans, the temporarily unemployed, the individual who has an infirmity that prevents him from working full time, nor the widow with minor children who has been left without adequate income to support herself and her children. But the present philosophy of providing public assistance to everyone "in need" without regard to the reasons for their becoming welfare clients living off the labors of the productive element of our society is encouraging a certain element of our society to wilfully violate established social customs in order to qualify for public assistance. This is especially true in the case of two particular categories of welfare recipients: the Aid to Families with Dependent Children and the General Public Assistance programs.

The following table of categories of public assistance for the year 1956 and 1965 reveals the rise in cost in each:

| | *1956* | *1965* | *Increase* |
|---|---|---|---|
| Old Age Assistance (OAA) | $ 5,704,726 | $ 7,520,700 | 31.8% |
| Aid to Families with Dependent Children (AFDC) | 7,172,011 | 31,525,291 | 339.5% |
| Public Assistance to the Needy Blind (PANB) | 300,570 | 331,518 | 10.3% |
| Aid to Permanently & Totally Disabled (APTD) | 3,189,805 | 6,343,000 | 98.8% |
| General Public Assistance (GPA) | 1,079,035 | 5,996,519 | 455.7% |
| General Public Assistance to Employables (GPA-E) | 35,348 | 266,740 | 654.6% |
| Foster Care of Children | 2,484,844 | 6,833,281 | 174.9% |
| Total | $19,966,339 | $58,817,049 | 194.6% |

It is obvious that the AFDC, GPA and GPA-E programs are increasing in cost at a far greater rate than any of the other programs and at a considerably greater rate than the rise in population. The reasons for this disparity become equally obvious when the programs are examined in detail.

In the Aid to Families with Dependent Children, the number of families qualifying for public assistance has risen from 6,251 to 20,184 between 1956 and 1965, a rise of 222.9%. The number of children involved has risen from 19,841 in June, 1956 to 65,984 in June, 1965, a rise of 232.6%.

A survey in December 1964 revealed that of the 61,141 children in the AFDC program at that time, 23,469 or 38.4% were illegitimate.

As of December 1958, there were 8,741 illegitimate children on the AFDC rolls according to Table I, page 143, of the Report of the Commission to Study Problems of Illegitimacy dated December 7, 1961. The annual report of the Department of Public Welfare for Fiscal Year 1958 reveals that there were 23,791 children on the AFDC rolls as of June, 1958. In other words, 36.7% of the total number of children on the AFDC rolls were illegitimate.

Comparing the statistics of 1958 with those of 1964 reveals that the number of illegitimate children rose from 8,741 to 23,469, or 168%.

Article 12 of the Annotated Code of Maryland, as amended, specifies that action may be taken against the father of any bastard child if he can be positively identified or when the person so accused proves to the satisfaction of the court that he is not the father, action can be taken against the mother to require her to provide for the support of the bastard child.

If the action authorized by the law had been taken and aggressively prosecuted it appears to the Committee that the recovery from the individuals guilty of adultery which resulted in the illegitimate birth of children should have been much greater, thus decreasing the tax burden of the productive citizens of this State.

The reasons given for failing to aggressively enforce the law are (1) insufficient personnel in the offices of the State's Attorneys in the political subdivisions; (2) the parties to the act are without sufficient resources to provide the necessary support to the illegitimate child; (3) placing one or both of the parties to the act in jail for failing to provide the support directed by the court only increases State costs because support must be provided to the child by the State and the State must pay for the support of the guilty and incarcerated party or parties to the act; (4) insufficient personnel to follow-up on fathers who fail to comply with the courts' orders to provide support as directed, etc., etc.

In the General Public Assistance category which involves individuals who are unable to work full time because of a partial disability such as epilepsy, tuberculosis, cardiac problems, etc., the increase between 1956 and 1965 has been even greater percentagewise than the AFDC category (455.7% vs. 339.5%).

As recipients of General Public Assistance, these individuals are also entitled to free medical care and hospitalization and are subject to re-examination to determine whether or not their disability is severe enough to warrant their continuation on the public assistance rolls. The fee for such an examination by a private physician has been $2.50 and not too many doctors would agree to perform it

for so small a fee. Recently, this fee has been increased to $10.00 and all individuals are being re-examined to determine the nature and extent of their claimed disability and whether or not they should be continued on the welfare rolls.

In the General Public Assistance — Employable category, which, as the title implies, involves those individuals who are temporarily unemployed and without resources, the cost has risen from $35,348 to $266,740 or 654.6% between 1956 and 1965. The number of families assisted under this program has increased from 40 in June of 1956 to 240 in June of 1965, an increase of 500%.

During an era of the highest economic activity this country has ever known, this rate of rise in employable individuals, is almost unbelievable. Even though, as the Department of Welfare pointed out, this is not a static group containing the same individuals and the fact that they have been able to attain a turnover rate of approximately 70% of the individuals in it, the Committee finds it difficult to believe that everyone in this group is actively seeking employment. Here again the welfare policy on the amount paid is believed to be partly responsible for discouraging these individuals from seeking employment.

For example, a family of five would be entitled to receive the maximum grant of $237.50 per month plus free medical care and hospitalization. If the family provider were working, he would have to receive an income higher than the grant to satisfy his costs of working, i.e., transportation, clothing, lunches, etc. in addition to such fixed deductions as Social Security, City Earnings Tax, etc., which would require him to earn approximately $300.00 a month to equal his welfare payment. If, because of his lack of education or training and experience, he cannot command more than $60.00 a week, or $260.00 a month, he is not inclined to obtain employment since he can get almost the same amount by remaining idle. If he is found to be unwilling to accept employment, the Department of Welfare can stop his public assistance payments. It is con-

ceivable that in such instances, he would seriously consider "deserting" his family so that they could continue to receive the maximum grant and then accept employment at whatever salary he is able to obtain thus increasing his family income substantially. At the same time, the family, as a group, are held at almost the poverty level and find it difficult to improve their lot. The father image is gone and the children, without the guidance they need, cannot be blamed for developing a resistance to establishing authority and becoming juvenile delinquents, thus continuing the poverty cycle.

*Conclusions and Recommendations:*

The present allowance for Housing is inadequate to the needs of many families obtaining aid under the Aid to Families with Dependent Children program.

> *Recommend that Welfare increase the Rental Allowance to the amount needed to meet the minimum requirements of each individual and family where this action is indicated by a study of available housing costs.*

AFDC mothers contention with respect to the adequacy of the Donable Foods program in Baltimore City and the adequacy of the present clothing allowance requires investigation and corrective action.

> *Recommend that the Department of Welfare re-examine their allowance for clothing and either augment or replace their Donable Food program with a Food Stamp program at the earliest possible moment.*

AFDC mothers appear to want training as Social Workers, Teachers, and Community Organizers.

> *Recommend that the Department of Welfare canvass all AFDC mothers as to the number desiring training and then take appropriate action to provide the training desired.*

Present Foster Care allowances should be re-examined and increased where such an increase will increase the

number of Foster Homes available to care for the children of incompetent, alcoholic, or promiscuous mothers.

*Recommend that the Department of Welfare re-examine their allowances for Foster Care and adjust those which will increase the availability of Foster Homes.*

The present retention of earnings allowance of $10 per month above the welfare estimated need is insufficient incentive to encourage welfare recipients to seek employment.

*Recommend that the Department of Welfare reactivate their request to the U. S. Department of Health, Education and Welfare to permit welfare recipients to retain a larger portion of their earned income above the welfare estimate of the minimum income necessary to adequately support the family.*

The present method of dissemination of Planned Parenthood information by the Social Worker is not as effective as that which might be possible by a clinic properly staffed by professional personnel.

*Recommend that the Department of Welfare request the funds necessary to establish sufficient Planned Parenthood clinics to satisfy the need for this service.*

Rehabilitation Training cannot be expanded appreciably without providing for the care of the children of mothers being trained and during their employment after training.

*Recommend that the Department of Welfare provide Day Care Centers or Day Care by some AFDC mothers while those trainable or employable are being trained or employed.*

Implementation of the recommendations contained in the Booz, Allen and Hamilton Report appears to be progressing as rapidly as qualified personnel can be employed.

*Recommend that the Department of Welfare intensify its efforts to recruit the qualified personnel required in order to implement the recommendations of the*

*Booz, Allen and Hamilton Report as rapidly as possible.*

The Maryland State Employment Service is capable of testing a limited number of welfare recipients to determine their educational level and job aptitudes and to aid in providing the training to qualify them for employment.

*Recommend that the Department of Welfare obtain a list of AFDC parents who are on public assistance rolls for the first time, and set up a joint training program for them with the Maryland State Employment Service.*

The fathers of children on AFDC who are divorced or legally separated, without a court decree, desertion, or not married to the mother amount to 65.5% of the total. Since the AFDC program cost $43,499,393, of which only $1,808,600 was recovered, a more aggressive policy requiring fathers to provide for their children would reduce State, Federal and Local costs of this program appreciably.

*Recommend that more aggressive action be taken by the Welfare and Probation Departments to require fathers to provide adequately for their children.*

Since the passage of H.B. 1207, as amended, would further the implementation of the Booz, Allen and Hamilton Report and it was not passed by the General Assembly in the 1966 Session because of the lack of time, *the Committee recommends that it together with Amendment No. 1 be proposed for passage during the next Legislative Session.*

The Committee cannot subscribe to non-prosecution of bastardy cases despite the obvious lack of economies involved. Regardless of the initial cost involved, aggressive prosecution of violators of the law in this type of case must be accomplished and widely publicized in order to put all potential violators on public notice that they will be prosecuted if they elect this course of conduct. To follow the present course of action is to invite a continuation of the present rising trend in the costs of the AFDC program

which amounted to $31,525,291, or 46% of the total net welfare cost of $68,524,308 in Fiscal Year 1965. By failing to prosecute the guilty, the responsible officials of this State are publicly condoning promiscuous behavior and irresponsibility by the least productive element of its population.

*In order to ensure that the responsible officials of this State do take appropriate action in all cases of bastardy, it is recommended that the present laws be amended to provide for the prosecution of those public officials responsible for the enforcement of Article 16, of the Annotated Code of Maryland, as amended, who fail to enforce the law and upon conviction that they be removed from office.*

While it is still too early to determine the effects of the action to re-examine GPA recipients on the part of the Department of Welfare, *the Committee recommends that this program be aggressively pursued and completed as soon as possible. It is also recommended that these individuals be re-examined on a monthly basis, if possible, to reduce the number on the GPA rolls to the absolute minimum.*

With respect to the AFDC program, the Committee suggests that a new approach to this problem be tried in which the Department of Welfare would take a more generous view of the estimated financial needs of the family which would permit the father to remain with his wife and children and retain all of his earnings as well as continue to receive public assistance so long as the sum of the two did not exceed the Welfare's estimate of his needs, not just to survive, but his needs which would enable him to improve his lot by continuing to work.

While the Committee realizes that this amounts to the concept of a guaranteed annual income to every family, it also recognizes that the present estimates of the needs of families on welfare are minimal and do not provide any incentive to the individual to continue to strive toward a self-supporting status. By providing the incentive to work and stay with his family, the individual is less likely to

abrogate his responsibilities as a father not only in the financial sense of the word, but also in the sense of providing the parental guidance his children need to keep them off the welfare path. The Committee sees no increase in costs to the State in such a program; if anything, the cost eventually should go down.

*It, therefore, recommends that the Department of Welfare and the State Board of Welfare review their policy with respect to estimates of the needs of welfare families and determine whether or not an increase would accomplish, in fact, the effects the Committee believes are possible.*

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## EXHIBIT A TO EXHIBIT F

### Excerpts from the Handbook of Public Assistance Administration — Department of Health, Education and Welfare

### Assistance in the Form of Money Payments

5120. *Interpretation*

"Money payments" are payments in cash, checks, or warrants immediately redeemable at par, made to the grantee or his legal guardian with no restrictions imposed by the agency on the use of funds by the individual.

The provision that assistance shall be in the form of money payments is one of several provisions in the act designed to carry out the basic principle that assistance comes to needy persons as a right. The right carries with it the individual's freedom to manage his affairs; to decide what use of his assistance check will best serve his interests; and to make his purchases through the normal channels of exchange; enjoying the same rights and discharging the same responsibilities as do friends, neighbors and other members of the community. The Social Security Administration's interpretation of "money payments" recognizes that a recipient of assistance does not, because he is in need, lose his capacity to select how, when, and whether each of his needs is to be met.

While the State may, if it chooses, give goods or services to a recipient, no part of the cost thereof may be included in claims for Federal participation in assistance payments. If the State agency pays a recipient a certain sum of money on condition that it be expended for certain designated goods or services, the action is legally equivalent to actually furnishing such goods or services directly to the recipient and cannot be considered as a "money payment" within the meaning of the Social Security Act.

In contrast with assistance provided through other methods (for example, congregate care; the provision of groceries or other goods and services; vouchers earmarked for specific items and payable to specific vendors; payments to vendors and cash payments, the expenditure of which is supervised), the money payment provides the recipient with a sum of money to be spent as he, not the agency determines will best meet his need. This sum of money is not identified with any particular requirement or requirements considered in arriving at the amount of the payment; nor is it for any specific items or purposes.

Money payments are supported in the administration of public assistance by the provision of services to the applicant and recipient designed to extend his field of choice by enabling him to make effective use of the resources available to him, including the public and private educational, health, employment, religious, recreational, and other facilities of the community. While the agency is responsible for making known to all recipients the availability of such resources, the decision as to the extent to which he wished to use the services of the agency is the recipient's. In making services available to persons who are infirm, bedridden, or otherwise incapacitated, the agency staff may need to perform services that would be inappropriate if performed to help well persons secure the goods and services which they regularly need. If the recipient's money is spent in accordance with his choices and desires, no question arises about violation of the money payment provision. If the recipient is too ill to make decisions for himself and does not have relatives or friends or a guardian to act for him, the agency should be prepared to do so. If

it is necessary for the agency to continue to act for him, the question arises as to whether the money payment best meets his needs.

5130. *Requirements*

5132. *Federal Financial Participation*

Payments must be accomplished without direction on the check or by letter or by agreement as a condition of receiving the payment, or by other notification, that the recipient must use his money in a specified way or for a specified purpose.

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EXHIBIT G

Report On
The Department of
Public Welfare

State of Maryland

Commission on
Governmental Efficiency and Economy, Inc.

Baltimore

May 1948

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*Foreword*

Maryland's present public welfare program really began in 1900 when an Act of the Maryland General Assembly (State Legislature) established a Board of State Aid and Charities. That Board was charged with the responsibility of investigating the condition and reporting to the Legislature the needs of all public and State-aided institutions and agencies. It also was empowered to administer and supervise the distribution of all moneys and commodities which might be made available to or by the State for relief of the distressed during involuntary unemployment, epidemics or other emergencies.

During the depression of the thirties when the Federal Government began to share in the cost of public assistance, Maryland, in order to participate in these Federal grants, amended its legislation to conform to the developing Federal program and the Board of State Aid and Charities became the central over-all administering agency for the State of Maryland and its twenty-four local governments.

In 1939 the State Legislature abolished the Board of State Aid and Charities and created the present State Department of Public Welfare with broader powers as the central coordinating, directing and supervising agency of all welfare activities in Maryland, including those of the twenty-three counties and Baltimore City, financed in whole or in part by State or Federal Government.

The present activities of the State Department of Public Welfare may be grouped in the following major classifications:

1) General supervision of the Public Assistance program and children's foster care and protective services;

2) Licensing and inspection of child care and child placement agencies and institutions and licensing of boarding homes;

3) General supervision of the State training schools (Montrose, Maryland Training School for Boys, Maryland Training School for Colored Girls, Cheltenham);

4) General supervision of the program of State aid to hospitals, institutions and agencies.

The administrative powers of the Department are autonomous only in the case of those services not embraced by the Federal Social Security Act. In the Federally-aided public assistance services, Maryland's policies and procedures must be cleared with the Federal Security Agency as part of a Federally-approved State plan. These Federally-aided services are Old Age Assistance, Aid to Dependent Children, Public Assistance for the Needy Blind.

The Federal requirements, which relate to a number of specific items and which are included in the Maryland law and the State Department of Public Welfare regulations, may be classified as:

1) Conditions which must be met by State agencies;

2) Interpretations issued as criteria in determining whether a state meets the requirements of the Federal statutes;

3) Procedures and reports which must be submitted by states.

In the case of General Public Assistance, the fourth public assistance category, the State Department's powers are autonomous since no Federal aid is received nor is the category included in the Federal Social Security Act.

Child welfare services, however, are included in the Federal Act, but the Federal Government contributes only a small lump sum towards administrative costs and exacts no requirements as to the nature or scope of the State's child welfare program.

It is with the foregoing five services that this study of public welfare at the State level was requested to deal.

*Nature and Scope of Study*

The study was made by the Commission on Government Efficiency and Economy, Inc., at the request of the Governor and the General Assembly of Maryland. It was financed wholly by the Commission, none of whose funds are received from any level of government. It was directed by D. Benton Biser, who utilized key members of the staff which he directed in the Commission's study of the Baltimore City Department of Welfare reported in December 1947.

For defining the scope of its study, the Commission has interpreted welfare at the State level as meaning the State Department of Public Welfare and the manner in which it discharges its responsibility to plan and regulate the op-

eration of Maryland's welfare program uniformly throughout the State. Thus defined, the scope of this study excludes investigation of the detailed operations of the local welfare agencies beyond the uniform application of the State Department's rules and regulations for carrying out the Maryland program.

The methods of study employed were initially the historical and documentary, followed by uncontrolled observation and finally by controlled interview and observation.

The study included examination of the execution of duties specifically assigned by law to the Department, as well as the scope and observable effects of its use of discretionary policy-making powers in relation to its duties.

Practice regarding each element which accepted theory deems essential to effective administration was examined, and there also were investigated such aspects as the equilibrium of organization, the role of authority and administrative behaviour. The facilities needed and provided received attention. Policy and practice were weighed against statistical data and the evidence collected by observations covering each phase of the operation and its management.

Each of the local welfare agencies in the twenty-three counties was visited in order to examine the State Department's relationship to and its effect upon critical points in the program's local administration and operating results.

In this local phase of the study alone, some hundred items were investigated most of which involved the checking of several details of practice. An average of approximately ten per cent of case records and related data were sample strictly at random and reviewed for their relation to these items.

In addition to observations and data collected during the study, members of the press, business men, county and State officials and other representative citizens were interviewed in all areas of the State regarding local judgment of the program and its results. Almost all of the

local agencies expressed disappointment that the study was not to be extended to the county level, and several expressed a desire for a complete investigation.

Th purpose of this report is to answer as briefly as possible the immediate questions of the Governor, the General Assembly, the Department and of the public at large concerning Maryland's welfare program.

In view of the conditions found, it has not been deemed necessary to expend the time or money required to reproduce statistical and other supporting data collected by the study staff or to repeat historical, descriptive and background text, much of which is already known to the officials involved or is available to the public in the usual reports and information bulletins from official sources. There also has been omitted from this report material assembled during the study, but regarding which no comment or important criticism seems necessary.

The excellent cooperation received by the study staff from the State Department and the local county agencies is acknowledged, as also is the helpful assistance extended by other departments, officials and citizens consulted throughout the State.

### *The General Situation*

Maryland's public welfare program as planned, directed and supervised by the State Department and as operated generally by the county agencies is being conducted efficiently and economically in the best interest of Maryland citizens, within the limits of the funds available.

Intensive study of the activities of the State Department of Public Welfare, together with an examination of the Department's relationship to and effect upon the administration and operation of the twenty-three local county welfare agencies, has disclosed little of a nature serious enough to justify criticism.

It was apparent that this situation was not of recent origin, but existed before the welfare surveys were begun.

The great weight of opinion throughout the State was found to regard the program as being rather conservative and that it should be so; and that its present scope was broad enough.

The program was being uniformly administered in accordance with the Maryland laws which govern it, and the operations of the local agencies themselves reflected such uniformity to a high degree.

Inquiry throughout the State, in both governmental and non-governmental quarters, developed that the State Department and the county agencies were well regarded, the relationship of the welfare agencies with other governmental agencies was considered to be satisfactory, the administration and operation of the program free from political interference. No evidence was found to refute those opinions.

There were no important problems common to all localities, either recognized as such by them or found to be in existence by the study. Difficulties that had occasionally arisen seemed to have been due not to any local non-conformance to the program nor to the hostility of the community or county governments, but to administrative weaknesses since corrected.

*Cost of Maryland Program.* During the early part of the past decade the trend in cost and number of cases was downward, but the latter part of the decade has shown increases, the cost trend rising more sharply than the number of cases. Analyses by the Federal Security Agency, however, show that the total costs of Maryland's program as well as the per capita cost, the amount of grant and the number of cases are generally below the average of other states.

*State Appropriations.* The State cannot lose sight of the fact that having established the purpose and scope of the program by law, it is equally essential to appropriate the funds required to carry out the objectives of the law effectively. If experience shows the cost to be higher than the State and its local sub-divisions wish to support, then the scope of the program should be narrowed.

In this jointly financed program, the actual use of State appropriations is, of course, subject to the amount of and time that the proportionate share of local funds is made available. Since the levy dates of the local governments do not all correspond with the State's fiscal period, it is reasonable that the State should provide adequate appropriations to match promptly the amount of local funds which it estimates will be provided as required.

*Federal Contributions.* The State is losing some Federal participation because of the requirement of United States citizenship for Old Age Assistance eligibility. As a result, many such needy cases must be placed in the General Public Assistance category to which the Federal Government make no contribution of funds, this category being financed equally by the State and local governments.

*Local Cost Burden.* Local authorities in a few of the counties complained that the present program was too expensive for them to carry, although no factual evidence could be found to support this. The local cost burden of the welfare program, however, does weigh more heavily upon some counties than upon others, and this difference in some cases is not necessarily directly related to the number and kind of cases, but has to do also with such factors as taxable resources, etc.

Some states, recognizing that they are more favorably situated to raise revenue than are their local governments, are assuming a greater share of the welfare costs than Maryland does. They thus theoretically distribute that cost more equitably within the state on the basis of ability to pay.

It is sound policy, however, for the Maryland local governments to have a real stake in the welfare program by continuing to bear a substantial share of the cost burden. This involves a problem of equalization which cannot be dealt with satisfactorily until the State's uniform fiscal procedures and reporting measures have been in effect long enough to make available reliable data regarding the resources and capacities of the local governments to partici-

pate in State and locally financed programs such as public welfare.

*Regulation of the Program*

The several Maryland laws are considered to be broad enough to allow all the flexibility that the Department of Public Welfare should be permitted to have to administer the program for which those laws provide. The various laws dealing with the different categories well might be consolidated into one law, thus saving repetition and possible confusion due to lack of uniformity in phraseology.

The Department has presented to the Legislative Council recommendations regarding other specific administrative clarifications in provisions of the existing laws.

*Rule Making.* In discharging the responsibility given it under the law for developing the State program, the Department appears to have exercised reasonable discretion in the rules and regulations it has established.

The Maryland welfare program or plan, as defined in specific Acts of the General Assembly and by policies and rules which are approved by the State Board of Public Welfare, is set forth in the State Manual.

The Manual describing the State plan is undergoing desirable improvement and simplification. Interpretative material and suggestions, which the Manual contains in addition to the mandatory rules and regulations, are specifically approved by the State Board of Public Welfare only in special cases. It is suggested that all Manual material be approved by the Board and that the distinction between mandatory and non-mandatory material be better emphasized.

*Local Participation.* Manual material is developed within the Department, but important policies and requirements are discussed with local agencies before final adoption. There is also an advisory committee of local board chairmen which meets annually with the State Board for consideration of the program. It has been the practice of the Department also to invite the chairmen of local boards to

meet annually for the discussion of some State-wide problem prior to the Department's formulation of its policy.

Much of the regulatory and interpretative material developed by the Department, however, reaches the local agencies with little real opportunity having been given local authorities to participate in its preparation and adoption.

The program now has reached a stage of development and general acceptance where a natural and almost inevitable tendency towards autocratic action should be guarded against by avoiding too much rule-making, by continuing carefully to test proposed policies in advance, and by assuring ample opportunity for local governments to participate responsibly in the initiation and formulation of program policy.

More consultation with private agencies as well as a sampling of representative public opinion in advance of policy formulation also should be helpful.

*Philosophies.* Several of the local governments were finding it difficult to accept the principle of State standardization of grants even with adjustment of those standards for different areas of the State.

This reluctance apparently stemmed from the interpretation by a number of local board members, county officials and citizens that the program should not be one having as a part of its purpose the lifting by money alone of the standard of living of the people receiving public assistance. The opinion was general that living on public assistance cannot be a satisfactory way of life and should not be made as attractive or profitable as earning a living.

The Department's approach to the objective of its service recognizes public assistance as only a temporary arrangement for the recipient while some permanent plan for self-support is being worked out by him with the assistance of the welfare agency. Towards fully accomplishing such objective, the need is recognized for continual improvement in developing a plan which will get the social worker onto the case immediately to help the recipient wherever

possible to make use of some solution other than public assistance; or to continue working on the case to see that a solution is found as soon as possible.

The Department regards these as criteria for measuring the degree of efficiency in accomplishing the objective of the service. But it is not satisfied that it has the answer to this problem in all parts of its present procedure. For example, during recent months it has been critically testing its methods in dealing with Aid to Dependent Children cases in the belief that present methods do not offer enough stimulation to the recipient to improve her circumstances.

*Federal Relationships.* The Department is careful to keep up to date in conforming the Maryland plan to Federal requirements. It clears with the Federal administration matters which involve Federal matching of funds.

The Department, pending its own thorough-going consideration and practical testing, does not accept all the interpretations which the Federal administration promulgates and the theories and philosophies it advance through its "state letters," conferences and the distribution of pamphlets and other material.

There is no evidence that undue pressure is exerted by the Federal administration to obtain acceptance by the State of philosophies or practices which go beyond specific requirements.

It should be noted particularly, that the study staff's understanding of the Federal-State-local relationship had been clarified since the report on the Baltimore City Department of Welfare. This present study has made it clear that the City Department was accepting philosophies and theories beyond the scope and philosophy of the official Maryland State welfare plan.

### *The State Department*

*Structure.* The organization structure of the Department is simple and on a line and staff basis heading up to the Director. Administration is classified according to func-

tional sub-divisions, the relationships of which are clearly placed with no duplication or overlapping. The lines of command are distinct and the points of responsibility clearly placed and observed in practice. There is no conflict between policy-making, directing, supervising and operating. No basic change in the structure of the Department is necessary.

No evidence was found that the Department now desires to expand beyond its present scope or to give to the public welfare program an importance out of proportion to its place among all public functions.

No tendency is manifested in the Department towards taking over activities that belong to other departments of government. For example, neither the State Department nor the county agencies indicate any desire to overlap or become too involved in the new medical care program placed by law under the supervision of the Health Department. They have set up no units to deal with promiscuous girls, nor entered the recreational field in administering summer camps for children.

*State Board of Public Welfare.* The Board of Public Welfare, which by law is the policy-making authority of the Department, is working well in practice. The fact that the law prescribes no qualifications for its members has not been a handicap and, moreover, it places upon the Governor heavier responsibility for the character of his appointments. In these, care has been taken to represent various important interests in the welfare field as well as the public at large.

In addition to certain specific duties imposed by the law, the Board is kept informed by the Director of important administrative matters. This serves in good purpose of keeping the Board in relatively close contact with the program and functions of the Department. The results being accomplished suggest no changes.

*Executives.* The uniformly good results being achieved are evidence that the Department executives apply principles of sound management and operating practice. Deci-

sions are reached objectively and converted into prompt and effective action. The Director and Assistant to the Director overlook none of the elements which are recognized as essential by accepted theory and practice of administration.

Administrative responsibility is not shifted to the staff, which is held responsible for process.

Accepting real responsibility and full accountability to the public and taxpayers for the public welfare program, the executives of the Department adopt an objective attitude towards the selection and testing of procedures and methods to accomplish the purposes of the program and for its improvement.

The staff is required to conform to State regulations regardless of personal attitude. Staff meetings are held to deal with new material or special problems, but no time appeared to be wasted on unguided discussion of doubtful purpose or result.

Unannounced routine visits to all local agencies should be made by the Director or the Assistant. Such visits should disclose matters of over-all operating management in which improvement can be made, as this study brought to the notice of the survey staff. They would serve also as practical tests of those phases of supervision by the Department's field supervisors.

*Staff.* The staff is well-balanced, adequate in size and specialization, capable and busy. It is mature intellectually, and emotionally stable.

*Salaries.* Salaries are not commensurate with job specifications or with responsibilities carried by either executive or professional staff positions. Adjustment is needed within the Department as well as standardization with other department of the State Government. As to clerical stenographic and accounting salaries, it is understood that the State Government is in the process of adjusting these on an equitable basis with other departments.

*Field Supervision.* Field supervision, by which the Department keeps in touch with the local agencies for control

and guidance of a uniform program, on the whole is good. It is persistent, but care is taken, however, to avoid making decisions or assuming responsibility rightly belonging to the local agencies.

In this regard there is a tendency by the supervisors to employ a process described by social workers as "working with" a person around a problem until the person worked with senses the problem in its full significance and his own responsibility to take corrective action on his own initiative.

This kind of process in dealing with experienced local directors is out of place at the level of State supervision. More direct methods should be employed by the field supervisors dealing with the executives of the local agencies and more direct methods should be employed, especially where correction is needed or where confusion exists as to the purpose and interpretation of a State regulation.

Supervisors should take the lead in their discussions with the agency directors, and not expect the directors to set the pace of the discussion or decide what subjects are to be dealt with.

In some county agencies, field supervision had failed to cover adequately such aspects of management as efficient office arrangement and neatness and the organization of records and files.

The supervisors appear to spend much time in writing up their field notes. Reporting on the whole is good, but the notes could be better organized to facilitate their review by adhering to a uniform schedule of topics. Such a schedule is in existence, but does not cover all items which the supervisors actually deal with in practice, and rightly so, to effectuate the State plan. All these items should be covered on each visit. Such a schedule completed in brief form would be a running record of the history of the agency's operating progress and the supervisor's appraisal of results being obtained. It thus would provide in ready summarized form supporting data for the annual evaluation of the agency.

Each of the field supervisors (except one) is assigned counties which are in widely separated sections of the State. This is done in an effort to give each field supervisor counties representative not only as to section of the State, but also as to size, organization, etc.

While such assignments have been made on the basis of time, travel and cost studies, it is suggested that the program might be better served by districting the State and assigning to each field supervisor a compact territory, rotating the supervisors from time to time among the districts. This plan should enable field superviors to spend more time in local agencies and to have direct experience with all the agencies and the problems of all sections of the State.

*Financial Services.* The financial policies and procedures are controlled and carried out efficiently. Safeguards provided are adequate.

The forms in effect are well designed and simple. Although the number and kind are controlled largely by Federal requirements, they serve useful purpose and are necessary.

The work of the field auditors in the county agencies could be lessened were it not for requirements of the Federal administration. The one audit a year now made of local agencies is adequate in view of the findings of past audits. Field auditors should be careful to correct errors on the spot and fully to instruct the local financial clerks in proper and efficient procedure.

*Statistics.* Statistical work is efficient. Routine forms and analyses now in use are necessary. Further statistical development is planned for useful administrative purposes on such subjects as eligibility, standardization, overpayments and frauds, appeals, housing needs, need for special care for the handicapped, etc.

*Physical Facilities.* The Department is very well housed, but its quarters are rented on short-term lease. Furniture and equipment are adequate and in good condition. Motor

transportation facilities are inadequately provided by the State, with the result that the members of the staff are obliged to use their own cars, subject to the mileage reimbursement which the State allows.

*Relationship with Other State Departments.* Related to the public welfare program are certain functions of other State departments such as those of the Comptroller, Treasurer, Auditor, Budget and Procurement, Employment and Health. The relationships are on a cooperative and responsible basis.

*Public Relations.* More informational material beyond the Manual and bulletins which are for Department and agency use is needed to keep the general public fully informed regarding the program, how it operates what its problems are, how these problems are approached for solution.

### *Standardization and Grants*

*Standardization.* In line with the goal of the Federal administration that all recipients be treated uniformly, the State Department has established standards for the items which may be included in a grant, with provision for adjustments according to locality, size of family, age, etc.

On the whole the Department appears to have weighed carefully the differences existing in areas of the State and to have made use of proper data responsibly in developing the standards adopted. Attention now is being given them towards revision where necessary. A part of this problem is to keep the public assistance grant from exceeding the earnings available to a comparable family which is self-supporting.

Standardization has provided a basis of accountability for the grant and its amount. It has eliminated the determination of a public assistance grant on the basis of individual judgment. Most local agencies and officials stated that standardization has eliminated many inequities and enabled the local agencies to deal more effectively with community pressure for special treatment for certain cases.

*Grants.* The individual grant is determined by deducting every resource available to the applicant or recipient from the case budget as calculated according to the standards which apply to the needs of the case. In some cases the public assistance grant may be less than five dollars a month, but by this method all persons who are recipients of any amount of public assistance are on the same standards.

When postwar conditions brought about an increase in the number of new cases, the State, in order not to withhold assistance from eligible applicants, withdrew from the case grants all but four essential items (food, shelter, clothing and household maintenance), and placed a ceiling on the total grant allowable. This released enough funds to absorb incoming cases without creating a waiting list or creating a deficit. This policy is sound and practical in that it does not withold assistance from anyone who can satisfy eligibility requirements strictly applied.

Ceilings are now being re-examined in the light of experience and present conditions.

Consideration of the allowances for the various items included in a public assistance grant does not indicate that it affords more than minimum subsistence. The grant allowed has not been adjusted closely to the cost of living, and moreover there are excluded at present items which are part of the customary expenditures of persons of even the lowest income group. Nevertheless, in some areas of the State the maximum grant allowable, even on the present basis, was deemed by the local authorities to be excessive for the recipient's normal pattern of living.

The belief is widespread among county boards, and there is some evidence tending to confirm it, that meagerness of grant is serving successfully as an incentive for recipients' regaining self-support. It is felt that the recipient, once on the welfare roll, has a tendency to relax and develop the attitude that the government owes him a living, and that, furthermore, too many of the recipients fail to appreciate what they are able to obtain with so little effort.

To combat such tendencies, the belief was held that for the good of Maryland as well as of the recipients, public assistance should not pamper or indulge the recipient; the aim should be to help them regain responsible control of their affairs.

Analysis of standards and items of the grant, as well as the average grants being paid, does not indicate that Maryland's public assistance program is too liberal.

Prevalent practice of the Department and county agencies regards the relief grant (except to the permanently incapacitated) as temporary assistance to tide the recipient over a difficult period and to give him opportunity to make plans to regain his own means of support and normal pattern of life.

Appeals from grants or from denials of grants are few in number.

*Employability.* Public assistance is not available for employable persons whose need arises only from unemployment, nor for persons who have resided in the State for less than one year. Under the present regulations a fully employable worker whose wages may be insufficient to maintain a large family at the minimum living standard is not eligible for public assistance. Nor is public assistance available to supplement Unemployment Compensation.

The practice of granting or denying assistance to people who can do only so-called light work, when such light work is not available, is not uniform throughout the State. The whole problem involved in the medical determination of unemployability or degree of employability is not now dealt with to the complete satisfaction of the Department or of the local governments.

The Department is giving attention to this weakness in the procedure for determining eligibility which grows out of the medical certification obtained by the applicant to prove his unemployability, and in the meantime is tightening its scrutiny of the use of such procedure.

*Legal Aids.* Problems in these fields so far have been without apparent practical solutions. More effective co-

operation between the local welfare agencies and the courts, probation departments and State's Attorneys is desirable in cases such as desertion, non-support, bastardy and the occasional overpayments, which as a rule, however, involve very small sums. Even when prosecuted, permanent solution seldom is effected, although the cases perhaps have some deterring effect upon would-be offenders, provided sufficient publicity is given them.

Study is being given such problems associated with Aid to Dependent Children cases and the State Department, moreover, is working out a procedure which may aid cooperative action with the other departments involved.

County agencies have available their own legal advisers under arrangements which are made by the individual counties and are not uniform throughout the State. It is suggested that the State Department give consideration to establishing a new position in the State Department for a staff member whose time would be spent in the field examining for the local agency problems relating to resources, legal aspects of the eligibility procedure, recoveries, etc.

# EXHIBIT H

(To Be Prepared In Six Copies)

Department of Health,
Education, and Welfare
Social Security Administration
Form PA-553
Rev. 1/52

Form approved
Budget Bureau No. 72-R440.1

## SUBMITTAL AND REPORT OF ACTION ON PUBLIC ASSISTANCE PLAN MATERIALS

1. To: Dept. of Health, Education and Welfare
Regional Office: III — Charlottesville, Va.
Attention: Public Assistance Representative

2. Date: Nov. 5, 1958

3. Submittal No. 48

4. From: Maryland State Dept. of Public Welfare

Enclosed are six copies of the following materials submitted for approval as part of the State's plans for public assistance:

5. Signature: .....

6. Title: Director

| *Identification Of Material And Program Affected* | *Outline Reference* | *Effective Date* | *Material Superseded* | *Disposition* | |
|---|---|---|---|---|---|
| 7 | 8 | 9 | 10 | [1] 11 | 12 |
| 1. Release #232 | — | — | — | O | |
| 2. II — Rule 200 — Pages 20 & 20b (ABCD) | IV | See Memo. | See Memo. | A | |
| 3. IV — 101.13-101.14 (ABCD) | I | " | " | A | |
| 4. V — Forms 302-City | V | " | " | A | |
| 302A-City | | | | A | |
| A. 355 | | | | A | |
| B. (ABCD) | | | | A | |

13. To: Mr. Thomas J. S. Waxter, Director. 14. Date: February 16, 1959.

15. The above materials were received in the regional office on November 6, 1958.

16. Items A and AL accepted for incorporation February 16, 1959. George Narensky.

[1] The symbols inserted indicate that the item:

(A) Has been accepted for incorporation into the State's approved plan.

(AL) Has been accepted for incorporation into the State's approved plan, comments in letters.

(O) Has been filed as other than plan material.

(NL) Is under consideration and notice of action will be sent later.

## SUBMITTAL AND REPORT OF ACTION ON PUBLIC ASSISTANCE PLAN MATERIALS

1. To: Dept. of Health, Education and Welfare
   Regional Office: III — Charlottesville, Va.
   Attention: Public Assistance Representative
2. Date: June 9, 1961
3. Submittal No. 87
4. From: Maryland State Dept. of Public Welfare

Enclosed are six copies of the following materials submitted for approval as part of the State's plans for public assistance:

5. Signature: .....
6. Title: Director

| *Identification Of Material And Program Affected* | *Outline Reference* | *Effective Date* | *Material Superseded* | *Disposition* | |
|---|---|---|---|---|---|
| 7 | 8 | 9 | 10 | [1] 11 | 12 |
| 1. Release Memo. #261 | — | — | — | O | |
| 2. II — Rule 200 ps. 6, 20, 24, 26 Rule 400 — ps. 1-14(c) | IV | See R. #261 | See R. #261 | See NL | Deleted, 87a Held in RO |
| 3. II — Sections 313.4; sub-div. 541; V — Forms 537 #850, 871 & H-1 | O | " | " | O | |
| 4. III — Rule 100 ps. 1-2c (ABCDM) | V | " | " | AL | |
| 5. IV — 15 pages (See R. #261) (ABCDM) | I | " | " | A | |
| 6. V — 300 Titles Forms 207 & 210 P.A. (ABCDM) | IV | " | " | A | |
| 7. V — Forms 250, 252, 253, 254, 258 (ABCDM) | VI | " | " | A | |
| 8. Form NCS 26, Pamphlet and other procedures for Baltimore City MAA | II | 6-1-61 | None | AL | |

13. To: Mr. Thomas J. S. Waxter, Director.
14. Date: August 15, 1961.
15. The above materials were received in the regional office on June 15, 1961.
16. Items A and AL accepted for incorporation August 25, 1961. George Narensky.

[1] The symbols inserted indicate that the item:

(A) Has been accepted for incorporation into the State's approved plan.
(AL) Has been accepted for incorporation into the State's approved plan, comments in letters.
(O) Has been filed as other than plan material.
(NL) Is under consideration and notice of action will be sent later.

R.O. SUPPLEMENT
SUBMITTAL AND REPORT OF ACTION ON PUBLIC ASSISTANCE PLAN MATERIALS

1. To: Dept. of Health, Education and Welfare
Regional Office: III — Charlottesville, Va.
Attention: Public Assistance Representative

2. Date: June 9, 1961
3. Submittal No. 87

4. From: Maryland State Dept. of Public Welfare

Enclosed are six copies of the following materials submitted for approval as part of the State's plans for public assistance:

5. Signature: _____
6. Title: Director

| *Identification Of Material And Program Affected* | *Outline Reference* | *Effective Date* | *Material Superseded* | *Disposition* | |
|---|---|---|---|---|---|
| 7 | 8 | 9 | 10 | [1] 11 | 12 |
| 2. Rule 400 — ps. 1-14(c) | IV | See R. #261 | See R. #261 | NL except ps. 5, 13, 14 sup. w/o inc. by #88; p. 7 sup. w/o inc. by #89; p. 9 sup. w/o inc. by #92. | |

13. To: Mr. Thomas J. S. Waxter, Director. 14. Date: November 9, 1961.
15. The above materials were received in the regional office on June 15, 1961.
16. Items A and AL accepted for incorporation: Date: _____ George Narensky.

[1] The symbols inserted indicate that the item:
(A) Has been accepted for incorporation into the State's approved plan.
(AL) Has been accepted for incorporation into the State's approved plan, comments in letters.
(O) Has been filed as other than plan material.
(NL) Is under consideration and notice of action will be sent later.

## SUBMITTAL AND REPORT OF ACTION ON PUBLIC ASSISTANCE PLAN MATERIALS

1. To: Dept. of Health, Education and Welfare
Regional Office: III — Charlottesville, Va.
Attention: Public Assistance Representative

2. Date: June 9, 1961

3. Submittal No. 87a

4. From: Maryland State Dept. of Public Welfare

Enclosed are six copies of the following materials submitted for approval as part of the State's plans for public assistance:

5. Signature: .....

6. Title: Director

| *Identification Of Material And Program Affected* | *Outline Reference* | *Effective Date* | *Material Superseded* | *Disposition* | |
|---|---|---|---|---|---|
| 7 | 8 | 9 | 10 | [1] 11 | 12 |
| 1. a. II — Rule 200, pp. 6, 20, 24, 26(c) | IV | 7/1/61 | Identical pages Already in Manual | A | |
| b. II — Rule 200, p. 26(c) | | | | Superseded without incorporation by Sub. #91 | |

13. To: Mr. Thomas J. S. Waxter, Director. Date: February 2, 1962.

15. The above materials were received in the regional office on June 15, 1961.

16. Items A and AL accepted for incorporation 1/22/62. George Narensky.

[1] The symbols inserted indicate that the item:

(A) Has been accepted for incorporation into the State's approved plan.

(AL) Has been accepted for incorporation into the State's approved plan, comments in letters.

(O) Has been filed as other than plan material.

(NL) Is under consideration and notice of action will be sent later.

## SUBMITTAL AND REPORT OF ACTION ON PUBLIC ASSISTANCE PLAN MATERIALS

1. To: Dept. of Health, Education and Welfare
Regional Office: III — Charlottesville, Va.
Attention: Public Assistance Representative

2. Date: June 9, 1961

3. Submittal No. 87

4. From: Maryland State Dept. of Public Welfare

Enclosed are six copies of the following materials submitted for approval as part of the State's plans for public assistance:

5. Signature: .....

6. Title: Director

| *Identification Of Material And Program Affected* | *Outline Reference* | *Effective Date* | *Material Superseded* | *Disposition* | |
|---|---|---|---|---|---|
| 7 | 8 | 9 | 10 | [1] 11 | 12 |
| 2. Rule 400 — ps. 1-14(c) | IV | See R. #261 | See R. #261 | A except ps. 5, 13, 14 sup. w/o inc. by #88; p. 7 supp. w/o inc. by #89; p. 9 sup. w/o inc. by #92 | |

13. To: Mr. Thomas J. S. Waxter, Director. 14. Date: March 12, 1962.

15. The above materials were received in the regional office on June 15, 1961.

16. Items A and AL accepted for incorporation 2/9/62. George Narensky.

[1] The symbols inserted indicate that the item:

(A) Has been accepted for incorporation into the State's approved plan.

(AL) Has been accepted for incorporation into the State's approved plan, comments in letters.

(O) Has been filed as other than plan material.

(NL) Is under consideration and notice of action will be sent later.

## SUBMITTAL AND REPORT OF ACTION ON PUBLIC ASSISTANCE PLAN MATERIALS

1. To: Dept. of Health, Education and Welfare
Regional Office: III — Charlottesville, Va.
Attention: Public Assistance Representative

2. Date: July 30, 1962

3. Submittal No. 104

4. From: Maryland State Dept. of Public Welfare

Enclosed are six copies of the following materials submitted for approval as part of the State's plans for public assistance:

5. Signature: .....

6. Title: Director

| *Identification Of Material And Program Affected* | *Outline Reference* | *Effective Date* | *Material Superseded* | *Disposition* | |
|---|---|---|---|---|---|
| 7 | 8 | 9 | 10 | [1] 11 | 12 |
| 1. Release Memo. #275 (7/62) Supplement to Release #275 (7/62) | | | | O | |
| 2. I — Sub-divs. 401, 403 & 404 V — Forms 321 & 387 (ABCD) | II | See R. Memo. | See Release Memo. | A | |
| 3. II — Rule 200, ps. 20, 31, 31a, 31i, 31i; Sec. 226; V—Form 226 (ABCD) | IV | " | " | A | |
| 4. II — Sec. 306.1; V — Form 213 (MAA) | IV | " | " | A | |
| 5. II — Rule 400, P. 14 V — Form 218 (C) | IV | " | " | A | |
| 6. III — Sec. 104.31; V — Forms 131, 206 COR., 207, 207 COR. (ABCDM) | V | " | " | A | |
| 7. V — Forms 257, 257—Instructions (ABCDM) | VI | " | " | A | |

13 To: Mr. J. S. Waxter, Director. 14. Date: September 17, 1962.

15. The above materials were received in the regional office on August 2, 1962.

16. Items A and AL accepted for incorporation 9/17/62. George Narensky.

[1] The symbols inserted indicate that the item:

(A) Has been accepted for incorporation into the State's approved plan.

(AL) Has been accepted for incorporation into the State's approved plan, comments in letters.

(O) Has been filed as other than plan material.

(NL) Is under consideration and notice of action will be sent later.

## SUBMITTAL AND REPORT OF ACTION ON PUBLIC ASSISTANCE PLAN MATERIALS

1. To: Dept. of Health, Education and Welfare
Regional Office: Charlottesville, Va.
Attention: Public Assistance Representative

2. Date: Sept. 17, 1963

3. Submittal No. 126

4. From: Maryland State Dept. of Public Welfare

Enclosed are six copies of the following materials submitted for approval as part of the State's plans for public assistance:

5. Signature: .....

6. Title: Director

| *Identification Of Material And Program Affected* | *Outline Reference* | *Effective Date* | *Material Superseded* | *Disposition* | |
|---|---|---|---|---|---|
| 7 | 8 | 9 | 10 | [1] 11 | 12 |
| 2. a. II — Rule 200 — VII (pages 20, 20a); XI (pages 24, 25, 25a). | | | | A | |
| b. II — Rule 200 XIV — Community Work and Training Projects (pages 25a, 25b and 26). | | | | NL | |
| c. II — Rule 200, XIV — Insufficient Funds (pages 26 and 26a). Supersedes Submittal 91, dated September 1, 1961, Item 1, Rule 200, pages 26 and 26a. | | | | NL in RO | |
| d. II — Rule 200 — Page 31a and 31f. | | | | A | |
| e. Subsection 202.1 — 202.6; 215.3—215.5. | | | | A | |
| f. Subsection 218.1 — 218.8; Form SDPW-275, Community Work and Training. | | | | NL | |

13. To: Mr. Raleigh C. Hobson, Director. 14. Date: September 24, 1963.

15. The above materials were received in the regional office on September 19, 1963.

16. Items A and AL accepted for incorporation 9/24/63. George Narensky.

[1] The symbols inserted indicate that the item:

(A) Has been accepted for incorporation into the State's approved plan.

(AL) Has been accepted for incorporation into the State's approved plan, comments in letters.

(O) Has been filed as other than plan material.

(NL) Is under consideration and notice of action will be sent later.

## SUBMITTAL AND REPORT OF ACTION ON PUBLIC ASSISTANCE PLAN MATERIALS

1. To: Dept. of Health, Education and Welfare
   Regional Office: Charlottesville, Va.
   Attention: Public Assistance Representative
2. Date: Sept. 17, 1963
3. Submittal No. 126
4. From: Maryland State Dept. of Public Welfare

   Enclosed are six copies of the following materials submitted for approval as part of the State's plans for public assistance:

5. Signature: .....
6. Title: Director

| *Identification Of Material And Program Affected* | *Outline Reference* | *Effective Date* | *Material Superseded* | *Disposition* | |
|---|---|---|---|---|---|
| 7 | 8 | 9 | 10 | [1] 11 | 12 |
| 1. Release #288, August 1963. | — | — | — | O | |
| 2. II — Rule 200, Pages 20-26; 31e; Subdivision 202; Sections 215.3 — 215.4; Subdivision 218; V — Form 275 (ABCD). | IV | See Release Memo. | See Release Memo. | see the attached page for disposition of item 2 | |
| 3. II — Section 413.2 (C) | II | " | " | A | |
| 4. III — 205.1-206.2; V — Forms 214, 216, 216C, 216M (ABCDM). | VI | " | " | A | |
| 5. Page 1 of V — 400 — Titles. | II | " | " | A | |

13. To: Mr. Raleigh C. Hobson, Director. 14. Date: September 24, 1963.
15. The above materials were received in the regional office on September 19, 1963.
16. Items A and AL accepted for incorporation 9/19/63. George Narensky.

[1] The symbols inserted indicate that the item:

(A) Has been accepted for incorporation into the State's approved plan.
(AL) Has been accepted for incorporation into the State's approved plan, comments in letters.
(O) Has been filed as other than plan material.
(NL) Is under consideration and notice of action will be sent later.

## SUBMITTAL AND REPORT OF ACTION ON PUBLIC ASSISTANCE PLAN MATERIALS

1. To: Dept. of Health, Education and Welfare
   Regional Office: Charlottesville, Va.
   Attention: Public Assistance Representative
2. Date: Sept. 17, 1963
3. Submittal No. 126
4. From: Maryland State Dept. of Public Welfare

Enclosed are six copies of the following materials submitted for approval as part of the State's plans for public assistance:

5. Signature: .....
6. Title: Director

| *Identification Of Material And Program Affected* | *Outline Reference* | *Effective Date* | *Material Superseded* | *Disposition* | |
|---|---|---|---|---|---|
| 7 | 8 | 9 | 10 | [1] 11 | 12 |
| 2. b. II — Rule 200 XIV — Community Work and Training Projects (pages 25a, 25b and 26). | | | | A | |
| f. Subsection 218.1-218.8; Form SDPW-275, Community Work and Training. | | | | A | |

13. To: Mr. Raleigh C. Hobson, Director. 14. Date: November 15, 1963.
15. The above materials were received in the regional office on September 19, 1963.
16. Items A and AL accepted for incorporation 10/7/63. George Narensky.

[1] The symbols inserted indicate that the item:
- (A) Has been accepted for incorporation into the State's approved plan.
- (AL) Has been accepted for incorporation into the State's approved plan, comments in letters.
- (O) Has been filed as other than plan material.
- (NL) Is under consideration and notice of action will be sent later.

## R.O. SUPPLEMENT
## SUBMITTAL AND REPORT OF ACTION ON PUBLIC ASSISTANCE PLAN MATERIALS

1. To: Dept. of Health, Education and Welfare
   Regional Office: Charlottesville, Va.
   Attention: Public Assistance Representative
2. Date: Sept. 17, 1963
3. Submittal No. 126
4. From: Maryland State Dept. of Public Welfare
   Enclosed are six copies of the following materials submitted for approval as part of the State's plans for public assistance:
5. Signature: .....
6. Title: Director

| *Identification Of Material And Program Affected* | *Outline Reference* | *Effective Date* | *Material Superseded* | *Disposition* | |
|---|---|---|---|---|---|
| 7 | 8 | 9 | 10 | [1] 11 | 12 |
| 2. c. II — Rule 200 — XIV, Insufficient Funds (pages 26 and 26a). | IV | See Release Memo. #288 | Rule 200, pages 26 and 26a (Submittal No. 91 dated Sept. 1, 1961, item 1). | AL | |

13. To: Mr. Raleigh C. Hobson, Director. 14. Date: July 15, 1964.
15. The above materials were received in the regional office on September 19, 1963.
16. Items A and AL accepted for incorporation 7/15/64. George Narensky.

[1] The symbols inserted indicate that the item:
- (A) Has been accepted for incorporation into the State's approved plan.
- (AL) Has been accepted for incorporation into the State's approved plan, comments in letters.
- (O) Has been filed as other than plan material.
- (NL) Is under consideration and notice of action will be sent later.

## SUBMITTAL AND REPORT OF ACTION ON PUBLIC ASSISTANCE PLAN MATERIALS

1. To: Dept. of Health, Education and Welfare
   Regional Office: Charlottesville, Va.
   Attention: Public Assistance Representative
2. Date: Jan. 15, 1964
3. Submittal No. 133
4. From: Maryland State Dept. of Public Welfare

Enclosed are six copies of the following materials submitted for approval as part of the State's plans for public assistance:

5. Signature: .....
6. Title: Director

| *Identification Of Material And Program Affected* | *Outline Reference* | *Effective Date* | *Material Superseded* | *Disposition* | |
|---|---|---|---|---|---|
| 7 | 8 | 9 | 10 | [1] 11 | 12 |
| 1. Release Memo. #291:<br>a) Instructions.<br>b) Effective Dates & Comments. | — | — | — | O | |
| 2. II — Rule 200 — P. 20a, Sec. 210.3, 210.5-210.6; 219.7; V — 310 — Instructions (D). | IV | See Release Memo. #291 | See Release Memo. #291 | AL | |
| 3. II — Rule 200 — Pgs. 31e and 31f; Sec. 219.3 (ABD). | IV | " | " | AL | |
| 4. II — Sec. 219.4 (ABCD). | IV | " | " | AL | |
| 5. V — Forms 310, 250 and 250S (ABCD). | VI | " | " | AL | |
| 6. Administrative Cost — Medical Care (ABCDM). | V | | | O | (no outline reference) |

13. To: Mr. Raleigh C. Hobson, Director.
14. Date: February 28, 1964.
15. The above materials were received in the regional office on January 23, 1964.
16. Items A and AL accepted for incorporation 2/28/64. George Narensky.

[1] The symbols inserted indicate that the item:
- (A) Has been accepted for incorporation into the State's approved plan.
- (AL) Has been accepted for incorporation into the State's approved plan, comments in letters.
- (O) Has been filed as other than plan material.
- (NL) Is under consideration and notice of action will be sent later.

## EXHIBIT I

State of Maryland, City of Baltimore, ss.

I, Maxie P. Howlett, being duly sworn, states the following:

I have been an employee of the State Department of Social Services and its predecessor agencies since 1942. In 1947, I began service as Supervisor of Plans and Standards for the Department, in which capacity I had the responsibility for formulating policy statements in connection with the AFDC Program. Since March 1965, I have served as Assistant State Director of the Department of Social Services for Family and Child Welfare Services.

It is my recollection that a maximum grant regulation has been in effect in Maryland since approximately the time of inception of state-wide need standards in 1944. It is also my recollection that these maximum grant regulations consistently have received Federal approval, I also recall that one factor giving rise to these regulations was the strong feeling on the part of many county boards, particularly during the period following adoption of statewide need standards in 1944 that public assistance payments should not exceed the earnings of the head of a family when off assistance and that the income of a public assistance recipient should not exceed that of his employed neighbors.

I recall that at various times during the early years following the introduction of the maximum grant regulation, the State Department of Public Welfare secured information as to wage levels from the State Employment Service and that the information thus secured was utilized in establishing maximum grant levels.

Sworn to and subscribed to by me this 23rd day of December, 1968.

MAXIE P. HOWLETT,

Assistant State Director.

(Jurat.)

PROCEEDINGS IN OPEN COURT — JANUARY 3, 1969

* * * * * *

(T. 6) (Judge Winter) But you have the sworn testimony of a representative of the state that they wanted to repeal the regulation. The only reason why they did not repeal the legislation was because the Governor failed to put in his (T. 7) budget the money that would be necessary, and the Legislature, as a consequence, failed to appropriate it.

(Mr. Liebmann) Your Honor, that is perfectly true as to the present position of the Department. As a matter of policy, the Department wants to get rid of this regulation. But we are here concerned with a question of Federal constitutional law, which binds not only the present Director of the Department, but any past Director, any future Director, any present Legislature, any future Legislature.

I do not think the fact that the present Director of the Department, for reasons which I respect — indeed, for reasons with which I sympathize as a matter of my own views as to this particular question of policy involved — I do not think the fact that that is the present position of the state is in any sense in conflict with the fact that there are other grounds which gave rise to this regulation, which can be urged in support of it.

Now, this precedent, if it remains the law of this case, is going to be cited not only in this case, but in many others in 24 or 25 states throughout the country. This is a case of great importance.

I do not know whether this Court has had occasion in the past to familiarize itself in any detail with what has been described as the welfare rights movement, and the basic purposes of the welfare rights movement, some of which (T. 8) are constructive, some of which are, I might say, frankly, destructive.

I think the impact of this decision is going to be very, very profound. Because what this decision will say is that the states, in framing their welfare structures, have to completely disregard the impact of the welfare — of the

level of welfare payments on the labor market, on the wage structure. From that, the implications which flow are, I think, considerable.

They go really to the basic conflict in public policy that we have in this country that really is one of the most important areas of domestic political controversy, and that is really whether you should endeavor to relieve the conditions which exist by massive programs of public works and employment or whether you should have a system of guaranteed income.

This decision, if it is implemented, is going to cast considerable weight into the balance in favor of the second general approach to these problems.

* * * * * *

(T. 31) (Judge Winter) Well, I am suggesting or asking you, why isn't it totally irrational? In other words, if the basic theory is that the maximum grant is tied in to current wage levels, that by imposing a maximum grant we encourage the adult in the family to get a job and not sit back and languish on the welfare rolls? How can this chain of reasoning apply when it is the child who is eligible because the parent is physically or mentally incapable of working, is dead or is absent?

(Mr. Liebmann) Well, I think first with respect to the death — with respect to death or absence, I think you have the presupposition that the child is in the family, is in some other family group where someone has the obligation of support.

Now, there is this great concern—

(Judge Winter) Well, take your one plaintiff in this case. Take your plaintiffs in this case, Mr. and Mrs. Gary, whom you stipulated are physically incapable of working; Mrs. Williams whom you stipulated, her husband has left her. Now she is there with the children and by reason of her — as I recall it, her own bad health and the tender age of the youngest children, is incapable of working.

(Mr. Liebmann) Well, Your Honor — (Pausing).

(Judge Winter) Now, of course this is a class action. These are only two of the plaintiffs.

(T. 32) (Mr. Liebmann) That's correct, Your Honor.

(Judge Winter) But we know what makes a child fall within the definition of a dependent child.

(Mr. Liebmann) Well, the other plaintiffs are AFDCU, or the class is not limited to non-AFDCU. That is to say, the children of unemployed parents are, in Maryland, included in the class represented by this action.

But I think also that there undoubtedly is a feeling on the part of at least some legislators that even in the other categories there is some — perhaps some tendency to overstate the extent of disability. You have—

(Judge Winter) Well, even if we assume—

(Mr. Liebmann) You have — I am sure this Court has to wrestle with this all the time in Social Security cases.

(Judge Winter) Well, even if we accept the correctness of your argument up to that point, then after you get around the fact that if you take some of the Williams children or some of the Gary children and put them in the home of an eligible relative, you can see that they can receive benefits under the program.

(Mr. Liebmann) Well, Your Honor, this is a — first of all I am not sure — the Court has conducted its reasoning, of course, entirely on a premise that the seventh, eighth (T. 33) and ninth child receive nothing, and I am sure we realize that in practice the grant is to the head of the family.

(Judge Winter) But is there any question that it is to the benefit of himself and his dependents?

(Mr. Liebmann) Yes, if the total grant is less, it means that there is less for each dependent but it is, I think, not true to say that the seventh, eighth and ninth child, as such, are just not on the rolls.

(Judge Winter) Well now, why isn't it, when the state's schedule of need shows what should be granted for the

seventh, eighth and ninth child, and we know that it is not being granted? After all, it is the state which, under the Act, has the right to prescribe the schedule of need.

(Mr. Liebmann) Yes, Your Honor.

(T. 34) (Judge Winter) And it is the state which has determined that a husband and wife and "X" number of children are entitled to, or should receive a minimum of $250; and that each child thereafter, in descending order up to the tenth, should receive "X" dollars more.

(Mr. Liebmann) Well, I think, Your Honor, that the state, apart from the question of need, was entitled to consider other factors, one of which was the real difficulty of limiting abuse of a welfare program, when you had total payments that were significantly higher than the wage rate.

I think that the regulation is, in part, a concession to administrative imperfection.

I think that is true. I think the people who are advocates of this sort of regulation feel that the best guarantee that every able-bodied person, or potentially able-bodied person, or semi-able-bodied person, will work is the harsh element of need.

But, apart from that, that brings me, I think, Your Honor, to the second ground that we have urged in support of this regulation.

I think Mr. Matera would be ready to concede that this arose earlier in the case, although not much of a point was made of it by the state earlier.

I do not want to make much of a point of it here, if for no other reason than it is an area of controversy (T. 35) that is highly charged emotionally. And that is the argument that the failure to give aid to families, or additional aid to children in families over a certain size, was designed to assure that persons of limited resources did not have an incentive to bear children that persons of less limited resources do not have.

The average wage-earner, the average member of the so-called middle class, does not have his income increased at all — I admit that the increases in income here are very slight — by reason of additional children.

There was a feeling, I suppose, on the part of some people that that was a ground for this particular classification.

(Judge Winter) All right. Now, how is that going to work? I mean how logically can that apply in the case of a dependent child who is a dependent child because there is one deceased parent and the surviving parent is physically incapable of working?

(Mr. Liebmann) I think, Your Honor, again, the answer to that is really found — I am quite willing to admit that this piece of legislation, like many, if not most, pieces of legislation, can operate illogically.

Unfortunately, legislation is not an exercise, or always an exercise, in perfect logic. It is a product of a process of political compromise.

(T. 36) (Judge Winter) But the political compromise must operate under the provisions of the Constitution, which says you cannot be totally illogical, so far as the equal protection clause is concerned.

Now, I am just trying to figure out how there is any logic, under the equal protection clause, to sustain what you say ought to be sustained as valid.

(Mr. Liebmann) Your Honor, I have been trying to address myself to that question.

I would say that I think the burden I have to carry on the motion for reargument, with respect to what the Court has already said, is, perhaps, somewhat less than that. Because the Court's statement, I think, is quite sweeping.

There is no qualification with respect to the state's applying this sort of regulation to people in the AFDC youth category, for example. There is no qualification of that kind.

There is no qualification with respect to the right of a state to apply it to people who have had significant numbers of children and who are being assisted in that way. Again, I do not lay much stress on that second ground, simply because, as I have said, it is a bitterly divisive subjects, and while the courts must deal with bitterly divisive subjects, I think the major importance of this case is on the less benefit point.

(T. 37) I have seen it seriously urged by many of the protagonists of the so-called welfare rights movement, which is really, I think, perhaps more highly organized, at least at its center, than this Court may realize, that, really, these welfare rights cases are, in a sense, only the opening wedge. And that what we really want and need is a system of family allowances, a system in which the objection that a wage-earner's compensation does not vary with the number of chilren is obviated by providing it for them, as well as for everyone else.

I think the problem one has when one says that the state cannot impose flat limits related to the wage scale on the total welfare payments is, in the long run, that the state cannot use these sometimes very harsh market forces as a form of economic discipline. It is ultimately going to be driven either to very complex and cumbersome administrative methods, some of which, I think, are perhaps embodied in the 1967 admendments, of trying to make sure that people work and taking all of their welfare payments away if they do not; or it may even be driven to some even more direct form of coercion or compulsion of labor.

I think, when one tries to look at it in a broad perspective, these cases are just one dot along the chain, as it were.

When you go back to the last century and read what (T. 38) was written about welfare payments in the age of laissez-faire, you see this deep concern, lest any payment operate as a detraction from the incentive to work.

I think no one disputes that that is carried to ridiculous lengths. At least I simply have no quarrel with many,

if not most, of the measures that have been taken to alleviate that.

But I think the point is that they were political measures arising out of the sense of injustice on the part of the elected representatives of the people. And what we here have is really a basic ideological, if you will, conflict.

It is not a conflict which, under the standards that, at least until very recently, were felt to be applicable to the state's prerogatives with respect to social legislation, is a conflict to be resolved by the courts.

If there is any reasonable ground, it can be urged on behalf of a regulation generally.

Now, Your Honor has pointed to a few perhaps extreme cases that can result. I think, probably on the average, although I am not a social worker and do not know, the stipulated cases are extreme cases. I am certain Mr. Matera did not choose his weakest cases when he brought this suit.

But we have to consider whether the regulation in the totality and, if you will, the average of its applications is totally irrational, in light of these basic elements (T. 39) that can enter into the state policy.

I would say simply that it is not, in a society in which just about all other forms of compensation are not related — are not related — to the number of dependents a person has. The one exception to that rule in our society, I think, is the military, where there are allowances for dependents. I think that is a significant exception, because in the military the government has a coercive power over people who are there.

I do not think you could run a free labor market on the basis of differential compensation for people on the basis of the number of their dependents. I think you have to wind up with some system for the allocation or direction or compulsion of labor.

What is claimed here, in its ultimate gradations, is that the state cannot design its social welfare programs in such

a way as to minimize interference with the labor market, having regard to all the bureaucratic imperfections that exist in the administration of any program.

* * * * * *

(T. 49) (Judge Winter) He makes a reference to the 1950 United States Code and Congressional Service.

(Mr. Matera) Yes, which we have read. It is similar to other legislative history which we examined. These particular pieces of legislative history talk about this particular provision being aimed at: one, providing benefits to all eligible individuals; and, two, providing these benefits promptly.

The state wishes to put all the emphasis on the fact that they will be provided promptly, and to give the whole meaning of that provision to that particular purpose.

(Judge Winter) Now, do you have any portion of the report that you think states the legislative intent with the same clarity that you have just summarized it?

(Mr. Matera) Your Honor, we would provide that to the Court.

(T. 50) (Judge Winter) Well, of course, I know that you are probably going to file a memorandum.

(Mr. Matera) Yes.

(Judge Winter) So that the record is clear, we refused your request to continue this case to give you additional time to prepare, primarily, I think, because I was about to start a term of court in Richmond; and then Judge Thomsen and Judge Harvey both have some commitments thereafter, particularly Judge Harvey, who, in the not too distant future, expects to start a protracted trial in another city.

In connection with denying that request for a postponement, we said that we would permit you to file a memorandum after the argument today.

Perhaps it would be better if you kept your copies, or your quotations, and what have you, and attached them to

that memorandum, rather than look for them now, if you do not have them at your fingertips.

I would be very curious — but I have not yet examined them myself — as to what the congressional reports say was the purpose of the 1950 remedy, and if they say that it, in effect, had two purposes, with the same clarity as you have expressed it; in other words, whether they support your statement.

(T. 51) (Mr. Matera) Yes, sir.

Your Honor, that more or less concludes the argument concerning interpretation of 609(a)(9) — 602(a)(9).

* * * * * *

*United States District Court for the District of Maryland*

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EXCERPTS FROM
EXHIBIT A[1] TO MEMORANDUM OF PLAINTIFFS IN OPPOSITION TO DEFENDANT'S MOTION

(U. S. Code Congressional Service, 81st Cong., 2d Sess. (1950), Pgs. 3471, 3507)

Page 3471:

Social Security Amendments

* * * * * *

a specific requirement designed to make it clear that a State plan, in order to be approved, must provide that all individuals wishing to make application for assistance shall have an opportunity to do so and that assistance shall be furnished with reasonable promptness to all eligible individuals. This new requirement would take effect July 1, 1951.

The same addition has been made by sections 321 and 341 of the bill to sections 402 (a) and 1002 (a), respectively, of the Social Security Act, although in the latter case the new clause is numbered (11).

These amendments proposed by the bill are the same in substance as those proposed on the same subject by the bill as passed by the House except that the latter would have required the assistance to be furnished "promptly" instead of "with reasonable promptness" as proposed by your committee. The change was made in order to assure the States reasonable time to make investigations and complete any other action necessary to determine eligibility and extent of need for assistance.

* * * * * *

Page 3507:

* * * * * *

*Opportunity to apply for and to receive assistance promptly*

The House bill provided with respect to all categories of public assistance that all individuals wishing to make application for assistance, shall have opportunity to do so and that assistance shall be furnished promptly to all eligible individuals. The Senate amendment provided that all individuals wishing to make application for old-age assistance shall have opportunity to do so and that old-age assistance shall be furnished with reasonable promptness to all eligible individuals. The conference agreement follows the Senate amendment.

The requirement to furnish assistance "with reasonable promptness" will still permit the States sufficient time to make adequate investigations but will not permit them to establish waiting lists for individuals eligible for assistance.

* * * * * *

EXCERPTS FROM
EXHIBIT A[2] TO MEMORANDUM OF PLAINTIFFS IN OPPOSITION TO DEFENDANT'S MOTION

(House Misc. Repts. VI, H. R. No. 1260-68, 81st Cong., H. R. No. 6000, Pg. 48 and H. R. No. 1300, Pg. 148)

House Report No. 6000, Page 48:

* * * * * *

*D. Opportunity to apply for and receive assistance promptly*

Shortage of funds in aid to dependent children has sometimes, as in old-age assistance, resulted in a decision not to take more applications or to keep eligible families on waiting lists until enough recipients could be removed from the assistance rolls to make a place for them. As noted in the discussion of this problem in the section on old-age assistance, this difference in treatment accorded to eligible people results in undue hardship on needy persons and is inappropriate in a program financed from Federal funds. The requirement that State plans must provide opportunity to apply to all persons wishing to do so and that assistance shall be furnished promptly to all eligible families is included in the proposed amendments to title IV of the Social Security Act.

* * * * * *

House Report 1300, Page 148:

* * * * * *

*Requirement relating to opportunity to apply for assistance and receive it promptly*

The provisions of section 3 (a) of the Social Security Act are also amended by the bill by the addition of a new clause (9). This clause would add a specific requirement designed to make it clear that a State plan, in order to be approved, must provide that all individuals wishing to make application for assistance shall have an opportunity to do so and that assistance shall be furnished promptly to all eligible individuals. This new requirement would take effect July 1, 1951.

The same addition has been made by sections 321 and 341 of the bill to sections 402 (a) and 1002 (a), respectively, of the Social Security Act, although in the latter case the new clause is numbered (11).

* * * * * *

EXHIBIT B[1]

Monthly Report of Employable Cases
Receiving Financial Assistance

August 1968

| Program | Current month | Same month previous year | Percent change |
|---|---|---|---|
| *General Public Assistance* | | | |
| Number of Families Assisted | 116 | 294 | — 60.5 |
| Average Grant per Family | $ 83,58 | $ 78.63 | + 6.3 |
| *Aid to Families with Dependent Children* | | | |
| Number of Families Assisted | 166 | 361 | — 54.0 |
| Recipients involved | 958 | 2,019 | — 52.6 |
| Average Grant per Family | $203.60 | $196.46 | + 3.6 |
| Average Grant per Recipient | $ 35.28 | $ 35.13 | + .4 |

9/19/68

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EXCERPTS FROM
EXHIBIT B[2] TO MEMORANDUM OF PLAINTIFFS IN OPPOSITION TO DEFENDANT'S MOTION

(Maryland State Department of Public Welfare, Public Assistance Rule 200, Proposed New Section)

Public Assistance Rule 200, Proposed New Section:

IX. *Referral for Work or Training* — Registration for employment and acceptance of suitable employment is a specific requirement for the receipt of AFDC where depri-

vation is due to unemployment of the father (III-D-d) and for the receipt of GPA-E (III-K-2-c). Any other member of an assistance unit determined appropriate for employment is to be referred for available employment counseling, registration or training.

The following sets forth the criteria for determining the appropriateness for referring a mother for work or training, and the requirements of the local department with regard to the Work Incentive Program (WIN).

* * * * * *

STATE DEPARTMENT OF PUBLIC WELFARE — EXHIBIT E[1]

1969 Revised Budget Request and Allowance

| | Caseload or Personnel | | Average Grant | | Total Funds | | State Funds | |
|---|---|---|---|---|---|---|---|---|
| | Request | Allowance | Request | Allowance | Request | Allowance | Request | Allowance |
| Assistance, Excl. Standards Increase: | | | | | | | | |
| OAA | 7,800 | 7,300 | 64.15 | 61.59 | 6,004,440 | 5,395,284 | 1,111,637 | 955,208 |
| Blind | 340 | 340 | 84.89 | 84.89 | 346,351 | 346,351 | 66,755 | 66,755 |
| APTD | 14,290 | 13,290 | 78.15 | 76.77 | 13,401,162 | 12,243,280 | 3,213,501 | 2,903,812 |
| Sub-total | 22,430 | 20,930 | 73.38 | 71.61 | 19,751,953 | 17,984,915 | 4,391,893 | 3,925,775 |
| AFDC | 118,500 | 110,000 | 39.80 | 38.98 | 56,595,600 | 51,453,600 | 23,944,500 | 21,046,500 |
| Board | 10,000 | 10,000 | 85.40 | 83.72 | 10,248,000 | 10,046,400 | 8,880,900 | 8,679,300 |
| GPA | 6,200 | 6,200 | 82.10 | 81.51 | 6,108,240 | 6,064,344 | 5,192,004 | 5,154,692 |
| GPA-E | 320 | 320 | 78.63 | 78.63 | 301,939 | 301,939 | 150,970 | 150,970 |
| Total Assistance | 157,450 | 147,450 | 49.23 | 48.52 | 93,005,732 | 85,851,198 | 42,560,267 | 38,957,237 |
| Increase Standards | 157,450 | | 14.50 | -0- | 27,394,371 | -0- | 26,593,665 | -0- |
| Local Depts.-Gen'l. Admin. | 2,760 | 2,164 | | | 23,616,715 | 19,713,330 | 12,824,587 | 10,708,963 |
| " " -Spec. Prog. | 631 | 443 | | | 5,218,388 | 3,745,564 | 1,391,338 | 977,367 |
| State Dept.-Gen'l. Admin. | 215 | 198 | | | 2,403,033 | 2,204,002 | 1,534,300 | 1,416,869 |
| " " -Spec. Prog. | | | | | 2,048,199 | 2,048,199 | -0- | -0- |
| Grand Total | | | | | 153,686,438 | 113,562,293 | 84,904,157 | 52,060,436 |
| "Increase standards" breakdown: | | | | | | | | |
| Food | | | | | 3,506,369 | | 3,303,069 | |
| Rent | | | | | 9,322,181 | | 8,783,306 | |
| Foster Care Rates | | | | | 4,529,340 | | 4,529,340 | |
| AFDC Clothing | | | | | 7,693,020 | | 7,693,020 | |
| Eliminate Max. Grants | | | | | 1,393,560 | | 1,393,560 | |
| "Living With" Factor | | | | | 775,625 | | 719,594 | |
| OASI beneficiaries, etc. | | | | | 174,276 | | 171,776 | |
| | | | | | 27,394,371 | | 26,593,665 | |

WHP:B 2-14-68

STATE DEPARTMENT OF SOCIAL SERVICES
Fiscal Year 1970 Budget

EXHIBIT E-2

| | OAA | BLIND | APTD | AFDC | FOSTER CARE | GPA | GPA-E |
|---|---|---|---|---|---|---|---|
| July 1968 Caseload | 7,747 | 343 | 13,506 | 109,405 | 10,738 | 6,284 | 125 |
| Budgeted Caseload - 1969 | 7,300 | 340 | 13,290 | 110,000 | 10,000 | 6,200 | 320 |
| Projected Caseload - 1970 | 7,600 | 345 | 18,524 | 127,493 | 11,000 | 5,500 | 205 |
| July 1968 Average Grant | 60.70 | 83.22 | 77.06 | 38.38 | 82.35 | 83.33 | 89.13 |
| Budgeted - 1969 Average Grant | 61.59 | 84.89 | 76.77 | 38.98 | 83.72 | 81.51 | 78.63 |
| Projected 1970 Average Grant | 61.62 | 86.80 | 81.93 | 40.72 | 83.77 | 84.14 | 79.20 |
| Budget - 1969 | 5,395,284 | 346,351 | 12,243,270 | 51,453,600 | 10,046,400 | 6,064,344 | 301,939 |
| Amt. needed as of July | 5,642,815 | 342,534 | 12,613,926 | 50,307,567 | 10,611,292 | 6,283,749 | 133,695 |
| Amt. for Increased Caseload | ( 107,075) | 1,997 | 4,630,418 | 8,330,609 | 250,908 | ( 781,969) | 85,565 |
| Amt. for Increased Cost | 83,904 | 14,821 | 904,712 | 3,590,003 | 187,440 | 53,460 | ( 24,428) |
| Total | 5,619,744 | 359,352 | 18,212,056 | 62,298,179 | 11,057,640 | 5,553,240 | 194,832 |
| Increased Food Allowance | 100,352 | 5,341 | 290,083 | 3,625,901 | | 104,940 | 3,050 |
| Increased Foster Care Rates | | | | | 4,403,520 | | |
| Increased AFDC Clothing | | | | 3,276,346 | | | |
| Eliminate Maximum Grants | | | | 1,116,339 | | | |
| Eliminate Living With Factor | 146,832 | 10,930 | 337,878 | 290,684 | | 73,920 | |
| Disregard | | | | 1,468,719 | | | |
| WIN - Increased Earnings | | | | ( 525,000) | | | |
| Increased Rent | 520,996 | 24,065 | 1,27[illegible],644 | 6,550,620 | | 442,655 | 14,992 |
| Increased Utilities | 416,047 | 19,217 | 1,021,074 | 4,049,003 | | 353,487 | 11,972 |
| Increased Public Housing | 37,360 | 1,764 | 92,220 | 460,200 | | 27,396 | 960 |
| | 6,391,831 | 420,869 | 21,223,755 | 87,612,976 | 15,461,160 | 6,555,638 | 225,806 |
| Average Grant | 75.02 | 101.61 | 95.48 | 57.27 | 117.13 | 99.33 | 91.79 |
| State | 1,460,811 | 146,362 | 3,023,029 | 52,398,772 | 12,157,464 | 5,670,627 | 112,903 |
| Federal | 4,560,000 | 207,000 | 11,114,400 | 33,650,152 | 1,748,544 | | |
| Local | 321,020 | 67,307 | 2,016,257 | 1,555,152 | 1,555,152 | 885,011 | 112,903 |

CP

11

OVERSIZE PAGE – SEE NEXT FRAME
FOR REMAINDER OF PAGE

STATE DEPARTMENT OF SOCIAL SERVICES
Fiscal Year 1970 Budget

EXHIBIT E[2]

| | OAA | BLIND | APTD | AFDC | FOSTER CARE | GPA | GPA-E | TOTAL |
|---|---|---|---|---|---|---|---|---|
| oad | 7,747 | 343 | 13,506 | 109,405 | 10,738 | 6,284 | 125 | 148,148 |
| ad - 1969 | 7,300 | 340 | 13,290 | 110,000 | 10,000 | 6,200 | 320 | 147,450 |
| oad - 1970 | 7,600 | 345 | 18,524 | 127,493 | 11,000 | 5,500 | 205 | 170,667 |
| ge Grant | 60.70 | 83.22 | 77.06 | 38.38 | 82.35 | 83.33 | 89.13 | |
| Average Grant | 61.59 | 84.89 | 76.77 | 38.98 | 83.72 | 81.51 | 78.63 | |
| Average Grant | 61.62 | 86.80 | 81.93 | 40.72 | 83.77 | 84.14 | 79.20 | |
| | 5,395,284 | 346,351 | 12,243,290 | 51,453,600 | 10,046,400 | 6,064,344 | 301,939 | 85,351,198 |
| of July | 5,642,915 | 342,534 | 12,613,926 | 50,337,567 | 10,611,292 | 6,283,749 | 133,695 | 86,020,678 |
| sed Caseload | ( 107,075) | 1,997 | 4,683,418 | 8,330,609 | 259,908 | ( 781,969) | 85,565 | 12,474,453 |
| sed Cost | 83,904 | 14,821 | 904,712 | 3,580,003 | 187,440 | 53,460 | ( 24,428) | 4,799,912 |
| | 5,619,744 | 359,352 | 18,212,056 | 62,298,179 | 11,057,640 | 5,553,240 | 194,832 | 103,295,043 |
| Allowance | 100,352 | 5,341 | 280,083 | 3,625,901 | | 104,940 | 3,050 | 4,119,667 |
| r Care Rates | | | | | 4,403,520 | | | 4,403,520 |
| Clothing | | | | 3,276,846 | | | | 3,276,846 |
| ura Grants | | | | 1,116,839 | | | | 1,116,839 |
| g With Factor | 146,832 | 10,930 | 337,878 | 290,684 | | 73,920 | | 860,244 |
| | | | | 1,463,719 | | | | 1,463,719 |
| Earnings | | | | ( 525,000) | | | | ( 525,000) |
| | 520,296 | 24,065 | 1,27 ,644 | 6,550,620 | | 442,655 | 14,992 | 8,832,972 |
| ties | 416,047 | 13,217 | 1,021,074 | 4,049,093 | | 353,487 | 11,972 | 5,871,695 |
| c Housing | 37,360 | 1,764 | 92,220 | 460,200 | | 27,396 | 260 | 620,400 |
| | 6,941,831 | 420,669 | 21,223,755 | 87,612,976 | 15,461,160 | 6,555,638 | 225,806 | 138,340,935 |
| | 75.02 | 101.61 | 95.48 | 57.27 | 117.13 | 99.33 | 91.79 | |
| | 1,460,811 | 146,362 | 3,023,023 | 52,398,772 | 12,157,464 | 5,670,627 | 112,903 | 30,040,037 |
| | 4,560,000 | 207,000 | 11,114,400 | 33,658,152 | 1,748,544 | | | 51,288,096 |
| | 321,020 | 67,307 | 2,016,257 | 1,555,152 | 1,555,152 | 885,011 | 112,903 | 7,012,802 |

CPP:ll 9-20-68

August 29, 1968

State Department of Social Services

1970 Fiscal Year Budget

1. Needed as of July, 1968 ..... $86,020.678

   Based upon caseload and average grant as of July, 1968

2. Increased Caseload ..... 12,474,453

   Projected caseload based on two year trend in caseloads

3. Increased Cost ..... 4,799,912

   Projected 1970 fiscal year average grant amount

4. Increased Food Allowance ..... 4,119,667

   Based on Bureau of Labor Statistics for low cost food diet using February, 1968. Urban Retail Food Prices

   The change in the Rule Schedule would be as follows:

| Size of Family | Current | Proposed | Increase |
|---|---|---|---|
| 1 person | 29 | 30 | 1 |
| 2 " | 52 | 54 | 2 |
| 3 " | 75 | 84 | 9 |
| 4 " | 95 | 106 | 11 |
| 5 " | 112 | 125 | 13 |
| 6 " | 127 | 141 | 14 |
| 7 " | 147 | 164 | 17 |
| 8 " | 168 | 187 | 19 |
| 9 " | 188 | 210 | 22 |
| 10 " | 208 | 233 | 25 |
| Each additional person over 10 | 20 | 23 | 3 |

5. Increased Foster Care Rates ..... 4,403,520

Increased rates recommended by the Advisory Committee on Foster Care (1967)

| | | |
|---|---|---|
| Regular Care | up to 6 years | $ 69 to $ 80 |
| | 6 to 12 " | $ 75 to $105 |
| | over 12 " | $ 89 to $125 |
| Emergency Care | | $ 85 to $115 |
| Special Care | up to 6 years | $ 94 to $120 |
| | 6 to 12 " | $100 to $145 |
| | over 12 " | $104 to $165 |
| Purchase of | ($ 9.00 per day) | $200 to $274 |
| Special Care | ($12.00 per day) | $200 to $365 |

6. Increase AFDC clothing and school supplies ..... $ 8,276,846

To place AFDC child of school age under the same standard for clothing and school supplies as currently applicable for Foster Care Children

Age 6 to 12 — Increase from $5.00 to $15.00

Age over 12 — Increase from $5.50 to $19.00

7. Eliminate living with factor: ..... $ 860,244

To eliminate the budget requirement of providing lower assistance to persons living with others as for assistance than to those persons living alone

8. Elimination of Maximum Grant ..... $ 1,116,839

To remove the current maximum grants of 250 and 240 per family. It is estimated that approximately 2537 families would be affected by removing this maximum

9. Disregard ..... $ 1,468,719

An estimated 2400 cases will have earnings in fiscal year 1970 averaging $93 per month. This will present a disregard of $51.00 per month per case.

10. Additional employed AFDC Cases .... ($ 525,000)

It is estimated that through the Work Incentive Program an additional 350 persons will be employed at an average earnings of 217/month ($50/wk).

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*United States District Court for the District of Maryland*

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## STIPULATION OF FACTS

Come Now the Plaintiffs and Defendants by their undersigned attorneys and respectfully show to the Court the following agreement as to facts and issues in addition to the matters previously stipulated to in the pleadings and at oral argument:

1. On a number of occasions the Secretary of HEW has accepted for incorporation revisions of the maximum for incorporation into the approved Maryland Plan of Operation. Such incorporation is evidenced by State's Exhibit H entitled "Submittal and Report of Action On Public Assistance Plan Materials."

2. That, on the basis of State's Exhibit H, when the revisions of the maximum grant regulation were submitted to the Secretary of HEW, the Secretary never notified the state that its revisions did not conform to the requirements of the Social Security Act, Section 402 (a), 42 U.S.C. Section 602(a).

3. That the significance, if any, of the incorporation of the amendments to the Plan of Operation, as reported on

Form FS-553, is detailed in the Handbook of Public Assistance Administration issued by the Department of Health, Education and Welfare to State agencies, as Part VII, section 1100, pages 1-15 and 57-63 which are annexed hereto.

4. That the Secretary's release of October 1962 entitled "State Maximums and Other Methods of Limiting Money Payments to Recipients", evidenced by State's Exhibit F, is an informational annual release containing comparisons of different methods of limiting money payments utilized in the various states.

5. That Defendant's Exhibit D, the Interim Policy on Need-Requirements for State Public Assistance Plans, is self-explanatory, and is an implementation of Section 402 (a)(23) of the Social Security Act, as amended by the 1967 Amendments.

6. That, apart from the significance, if any, of plan amendment incorporations, the above mentioned informational release and the Interim Policy, no statement by HEW of either approval or disapproval of maximum grant regulations has come to the attention of the parties.

(Signatures omitted.)

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*United States District Court for the District of Maryland*

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## SUPPLEMENTAL MEMORANDUM OF DEFENDANTS IN SUPPORT OF MOTION FOR REARGUMENT

Since argument and filing of memoranda on the Motion for Reargument, certain additional materials, difficult of obtention, relating to the validity of the challenged regulation under the Social Security Act have come to the attention of counsel. In view of the continued pendency of the Motion for Reargument, counsel for defendants deem it their obligation to bring to the attention of the Court, without further comment, the following materials

relating to the legislative history of the 1950, 1962 and 1967 amendments of the Social Security Act:

*1950 Amendments* (adding 42 U.S.C.A., § 602 (a) (9)) Cohen, *Factors Influencing the Content of Federal Public Welfare Legislation*, 1954 Social Welfare Forum 199, 205, 209.

*1962 Amendments* (adding 42 U.S.C.A., § 606 (b) (2) (B)) Public Law 87-543, § 108, U. S. Cong. & Admin. News 1962-1, at 236.

Senate Committee Report on § 108, 1962-1 U. S. Cong. & Admin. News at 1955-56.

Conference Committee Report on § 108, 1962-1 U. S. Cong. & Admin. News at 1980-81.

Cohen and Ball, The Public Welfare Amendments of 1962, 20 Public Welfare 191, at 229-30.

*1967 Amendment* (adding 42 U.S.C.A., § 602 (a) (23)) Hearings before the House Committee on Ways and Means. 90th Congress, 1st Session, on President's Proposals for Revision in the Social Security System, Part I, pp. 13, 18, 26-27, 59-60 (re unadopted proposal requiring full need to be met).

Conference Report on Social Security Amendments of 1967, pp. 62-63.

*1967 Amendment* (adding 42 U.S.C.A., § 1396 (b) (f) (1) (B) Public Law 90-248, § 220, 1967 U. S. Cong. & Admin. News 4667-69.

House Committee report on Sec. 220, pp. 118-19.

Forwarded also, for the court's convenience, are the Government Printing Office copies of the full text of the House Senate and Conference Committee reports on the 1967 amendments, together with the text of such amendments and a monograph issued by the Bureau of Family Services of the Department of Health, Education and Welfare entitled Public Assistance under the Social Security Act (1966), describing federal-state relationships and plan amendment approval procedures.

(Signatures and Certificate of Service omitted.)

EXCERPTS FROM ATTACHMENTS TO SUPPLEMENTAL MEMORANDUM OF DEFENDANTS IN SUPPORT OF MOTION FOR REARGUMENT.

From Cohen, Factors Influencing the Content of Federal Public Welfare Legislation—

page 205 *(Public Welfare Legislation):*

The Committee on Economic Security recommended that the Federal Government contribute one third of the costs of ADC (as compared with one half of the costs of OAA). There were no limitations on the amount to be paid by the Federal Government per child (as compared with $15 per month for OAA). The proposed total Federal appropriation was a closed-end appropriation of $25 million a year, and if this sum was inadequate the amount was to be prorated among the states (as compared with a closed-end appropriation of $125 million for OAA). The bill provided, among other things, that the state plan, to be approved by the Federal Government, must furnish "assistance at least great enough to provide, when added to the income of the family, a reasonable subsistence compatible with decency and health." The bill recognized that there would be waiting lists in that it provided that a state would have to file an annual statement of the number of children on the waiting list to receive assistance. The bill did not define what "assistance to children" meant.

The House Ways and Means Committee retained the one-third matching for ADC and at the same time approved the more favorable one-half matching for OAA. But the House committee wrote into the legislation (at the suggestion of Congressman Vinson who later became Chief Justice of the United States) a limitation on the Federal share of matching of $18 a month for the first child and $12 for each additional child. These figures were obtained by review of the Federal pensions provided for widows and children under veterans legislation of which the Ways and Means Committee at that time had jurisdiction. But, whereas the veterans schedule then provided $30 for two children where there was no widow and increased the amount to $46 where there was a widow, the

committee did not include any payment for the mother under ADC. It was not until 1950 — fifteen years later — that this defect was corrected.

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page 209 *(Public Welfare Legislation):*

Several amendments recommended by the Social Security Administration were enacted without any opposition or debate. Others were vigorously opposed, and some were defeated and others modified. One which was accepted without opposition was the requirement for the abolition of any waiting lists. This requirement is now in the law and is a striking development in view of the fact that the first proposal in 1935 seemed like great progress when it provided for recognizing waiting lists and getting a statistical count of the number on such lists. In my opinion, the 1950 amendment was not attributable to any program of social action developed by social workers. It probably was due to the strong feeling of "equity" in the legal mind of the lawyer members of Congress and to the belief that waiting lists could give rise to discrimination and preferences which should be avoided.

Now I shall illustrate a different process, one where Congress takes the initiative. It is the situation in which a specific amendment was written into the law by the House committee. This was the so-called "NOLEO" (notification to law enforcement officers) amendment under which the state must provide for prompt notice to appropriate law enforcement officials in any case in which aid is furnished to a child who has been deserted or abandoned by a parent. Congress then, as now, had pending before it proposals to make desertion across state lines a Federal crime, just as certain other interstate actions such as kidnaping, white slave traffic, and transporting stolen automobiles are Federal crimes. This proposal raised many serious questions as to the role of the Federal Government in family problems. The NOLEO amendment, devised by Fedele Fauri, then a staff adviser to the Committee on Ways and Means, was an attempt to find a constructive means of aiding support of families without imposing conditions on

the recipient other than need. Congress, in initiating and adopting the amendment, was responding to public opinion and at the same time attempting to work out something constructive without infringing on state rights or broadening the area of Federal control over family matters or changing the basic principles of the ADC program. * * *

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From Cohen and Ball, The Public Welfare Amendments of 1962, 20 Public Welfare 191, at 229-230—

pages 229-230 *(Public Welfare Amendments):*

Senate Finance Committee Action

At the time that H.R. 10606 passed the House, the Senate Finance Committee had scheduled early hearings on the tax revision bill and was accordingly not able to take up the welfare bill immediately. It did hold public hearings on May 14, 15, 16, and 17 and then executive sessions on June 6 and 7. The Committee made a number of amendments in the bill.

1. It concluded that the requirement that a state provide minimum services prescribed by the Secretary in order to qualify for any Federal participation under a program was too drastic a requirement and modified this to provide that if the state did not make the minimum prescribed services available, its present participation and administrative costs would be reduced by one-half, i.e., to 25 percent, but that Federal participation in assistance payments would not be affected.

2. The Committee adopted language clarifying the language in the House bill as to the relationship between state public welfare agencies and state vocational rehabilitation agencies with more explicit language as to the circumstances under which services could be provided and under which reimbursement could be made.

3. The Committee adopted the formula in the House bill for increases in payments to the aged, blind and disabled. They made the $4 increase effective on October 1, 1962, rather than on July 1, 1962. The temporary $1 in-

crease which was scheduled to expire June 30, 1962, was extended through September 30, 1962.

4. An amendment was adopted to the section on protective payments which would permit a state to use such payments for those cases, which under the state's usual standards, would have their needs met in full even though the operation of some other feature, such as a statutory maximum, prevented all recipients of ADC from having needs met in full.

5. The Committee eliminated section 107 (a) of the House bill, the one which would have permitted voucher payments and any other action authorized under state law.

6. The Committee adopted an amendment exempting payments for work on community work and training programs under title IV from Federal income tax and withholding liability.

7. The Committee deleted the provision in the House bill which would have expanded foster care under the ADC program to include Federal participation in payments for otherwise eligible children who were placed in private child-care institutions.

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President's Proposals for Revision in the Social Security system

Hearings

before the

Committee on Ways and Means

House of Representatives

Ninetieth Congress

First Session

on

H.R. 5710

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March 1, 2, and 3, 1967

(page 13):

Welfare of Children

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Message
from
The President of the United States
transmitting
Recommendations for the Welfare of Children

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February 8, 1967. — Referred to the Committee of the Whole House on the State of the Union and order to be printed

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(page 18):

Social Security Increases for Children

Two weeks ago, I proposed legislation to bring the greatest improvement in living standards for those covered under social security since that historic act was passed in 1935.

While this program extends primarily to the older Americans, it also covers a child if the family breadwinner, who is under social security, dies, retires, or becomes disabled.

Today, more than 3 million children receive social security payments. Their average benefit is only $52 a month.

*To provide more adequate payments to these children, I recommend legislation to enlarge their benefits—with an average increase of at least 15 percent.*

Improving Child Assistance

Enacted during the 1930's, the "Aid to Families with Dependent Children" (AFDC) program is a major source of help for the poor child. Under AFDC, Federal financial aid is provided to States to help needy families with children under 21.

There are serious shortcomings in this program:

Only 3.2 million children received benefits last year.

Twelve million children in families below the poverty line received no benefits.

Thirty-three States do not even meet their own minimum standards for subsistence.

Seven States offer a mother and three children $120 a month or less.

Only 21 States have taken advantage of a 1962 law, expiring this year, allowing children with unemployed parents to receive financial assistance. Only 12 States have community work and training programs for unemployed parents to give them the skills needed to protect their family and earn a decent living. A number of States discourage parents from working by arbitrarily reducing welfare payments when they earn their first dollar.

*To remedy these deficiencies and give the poorest children of America a fair chance, I recommend legislation to—*

*Require each State to raise cash payments to the level the State itself sets as the minimum for subsistence, to bring these minimum standards up to date annually, and to maintain welfare standards at not less than two-thirds the level set for medical assistance.*

*Provide special Federal financial assistance to help poorer States meet these new requirements.*

*Make permanent the program for unemployed parents, which expires this year.*

*Require each State receiving assistance to cooperate in making community work and training available.*

*Require States to permit parents to earn $50 each month, with a maximum of $150 per family, without reduction in assistance payments.*

* * * * * *

(pp. 26-27)

(The Chairman) On February 20, 1967, the Chair, at the request of the administration, introduced the bill which

contains the administration proposals, H.R. 5710 in order to make it generally available to the public for study.

Without objection, there will be included at this point in the record a copy of that bill.

(The bill, H.R. 5710, follows:)

[H.R. 5710, 90th Cong., First Sess.
Introduced by Mr. Mills on February 20, 1967]

A BILL To amend the Social Security Act to provide an increase in benefits under the old-age, survivors, and disability insurance system, to provide benefits for additional categories of individuals, to provide health insurance to the disabled, to improve the public assistance program and programs relating to the welfare and health of children, to revise the income tax treatment of the aged, and for other purposes

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That this Act, with the following table of contents, may be cited as the "Social Security Amendments of 1967".

Table of Contents

Title I — Old-age, Survivors, Disability, and Health Insurance

Part 1—Benefits Under the Old-Age, Survivors, and Disability Insurance Program

Sec. 101. Increase in old-age, survivors, and disability insurance benefits.

Sec. 102. Special Minimum Primary Insurance Amount.

Sec. 103. Maximum Amount of a Wife's or Husband's Insurance Benefit.

Sec. 104. Increase in Benefits for Certain Individuals Age 72.

Sec. 105. Widow's Benefits for Disabled Widows Under Age 62.

Sec. 106. Increase in Amount an Individual is Permitted to Earn without Suffering Full Deductions from Benefits.

Sec. 107. Increase of Earnings Counted for Benefit or Tax Purposes.

Sec. 108. Changes in Tax Schedules.

Sec. 109. Disability Insurance Trust Fund.

Sec. 110. Elimination of Provisions Denying Benefits to Individuals Because of Membership in Certain organizations.

Part 2—Coverage Under the Old-Age, Survivors, and Disability Insurance Program

Sec. 115. Coverage of Agricultural Labor.

Sec. 116. Transfer of Federal Employment Credits.

Sec. 117. Coverage of Status of Shrimpboat Fishermen and Truck Loaders and Unloaders.

Part 3—Health Insurance Benefits

Sec. 125. Health Insurance for the Disabled.

Sec. 126. Health Insurance Payments to Federal Facilities.

Sec. 127. Inclusion of Podiatrists' Services under the Supplementary Medical Insurance Program.

Sec. 128. Increase in Membership of the National Medical Review Committee.

Sec. 129. Depreciation Allowance for Purposes of Determining Reasonable Cost.

Sec. 130. Outpatient Hospital and Diagnostic Specialty Benefit for the Aged and Disabled.

Sec. 131. Elimination of Requirement of Physician Certification in the Case of Inpatient Hospital Services At Time Individual Becomes an Inpatient.

Part 4—Miscellaneous and Technical Amendments

Sec. 150. Eligibility of Certain Children for Monthly Benefits.

Sec. 151. Eligibility of an Adopted Child for Monthly Benefits.

Sec. 152. Parents' Insurance Benefits.

Sec. 153. Underpayments.

Sec. 154. Simplification of Computation of Primary Insurance Amount and Quarter of Coverage in the Case of 1937-1951 Wages.

Sec. 155. Definition of Widow, Widower, and Stepchild.

Sec. 156. Extension of Time for Filing Report of Earnings.

Sec. 157. Penalties for Failure to File Timely Reports.

Sec. 158. Limitation on Payment of Retroactive Benefits in Certain Cases.

Sec. 159. Statute of Limitations for Self-Employment Income.

Sec. 160. Enrollment under Medicare Based on an Alleged Data of Attainment of Age 65.

Sec. 161. Services of Interns and Residents As Inpatient Hospital Services.

Sec. 162. Payment for the Purchase of Durable Medical Equipment.

Sec. 163. Furnishing Consultative Services to Laboratories.

Sec. 164. Limitation on Reduction of 90 Days of Inpatient Hospital Services.

Sec. 165. Medicare Benefits to Individuals Who Die in Month of Attainment of Age 65.

Sec. 166. Report of Board of Trustees to Congress.

Sec. 167. Redesignation of Old-Age Insurance Benefits.

Title II—Public Welfare Amendments

Part 1—Public Assistance Amendments

Sec. 201. Earnings, Exemptions of Public Assistance Recipients.

Sec. 202. Requirement for Meeting Full Need.

Sec. 203. Income in Determining Eligibility.

Sec. 204. Federal Assistance in Meeting the Cost of Community Work and Training.

Sec. 205. Federal Share of Public Assistance Expenditures.

Sec. 206. Additional Federal Payments to Meet Non-Federal Share of Cash Assistance Expenditures.

Sec. 207. Temporary Assistance for Migratory Workers.

Sec. 208. Amendments Making Permanent Certain Provisions Relating to Public Assistance.

Part 2—Medical Assistance Amendments

Sec. 220. Limitation on Medical Participation in Medical Assistance.

Sec. 221. Determining Maintenance of State Effort.

Sec. 222. Coordination of Title XIX and the Supplementary Medical Insurance Program.

Sec. 223. Modification of Comparability Provision.

Sec. 224. Extent of Federal Financial Participation in Certain Administrative Expenses.

Sec. 225. Advisory Council.

Sec. 226. Free Choice by Individual Eligible for Medical Assistance.

Part 3—Child-Welfare Services Amendments

Sec. 235. Federal Share for Training Personnel.

Sec. 236. Authorization for Appropriations.

Sec. 237. Projects for Experimental and Special Types of Child-Welfare Services.

Part 4—Miscellaneous and Technical Amendments

Sec. 245. Permanent Authority to Support Demonstration Projects.

Sec. 246. Permitting Partial Payments to States.

Sec. 247. Contracts for Cooperative Research or Demonstration Projects.

Title III—Improvement of Child Health

Sec. 301. Early Case Finding and Treatment of Handicapping Conditions of Children.

Sec. 302. Dental Health of Children.

Sec. 303. Special Maternity and Infant Care Projects.

Sec. 304. Revisions of Authorization for Maternal and Child Health Services.

Sec. 305. Training for Health Care of Mothers and Children.

Sec. 306. Research in Maternal and Child Health Services and Crippled Children's Services.

Sec. 307. Program Evaluation in Maternal and Child Health and Welfare.

Sec. 308. Conforming or Technical Amendments.

Title IV—General Provisions

Sec. 401. Social Work Manpower and Training.

Sec. 402. Meaning of Secretary.

Title V—Tax Treatment of the Aged

Sec. 501. Repeal of Retirement Income Credit.

Sec. 502. Definition of Adjusted Gross and Taxable Income.

Sec. 503. Inclusion of Certain Social Security and Railroad Retirement Benefits in Income.

Sec. 504. Special Exemption for Individuals Age 65 or More; Repeal of Additional Exemption.

Sec. 505. Retirement Income Deduction.

Sec. 506. Miscellaneous Amendments.

Sec. 507. Effective Dates.

(pp. 59-60)

(b) Effective July 1, 1967, section 402(a)(7)(A) of such Act is amended to read as follows: "(A) the State agency may disregard not more than $50 per month of earned income of each dependent child and of any relative claiming aid to families with dependent children, but not in excess of $150 per month of earned income of such dependent children and relatives in the same home."

(c) Effective July 1, 1969, section 402(a)(7)(A) of such Act (as amended by subsection (b) of this section) is further amended by striking out "may disregard not more than" and inserting in lieu thereof "shall disregard".

Requirements for Meeting Full Need

Sec. 202. (a) Section 2(a)(10) of the Social Security Act is amended by striking out "and" and at the end of subparagraphs (B) and (C) and by adding after subparagraph (C) the following new subparagraph:

> "(D) provide (i), effective July 1, 1969, for meeting (in conjunction with other income that is not disregarded under the plan and other resources) all the need, as determined in accordance with the standards applicable under the plan for determining need, of eligible individuals (and such standards shall be no lower than the standards for determining need in effect on January 1, 1967), and (ii), effective July 1, 1968, for an annual review of such standards and (to the extent prescribed by the Secretary) for up-dating such standards to take into account changes in living costs;"

(b) Section 402(a) of such Act is amended by striking out "and" at the end of clause (13) and by inserting before the period at the end thereof after clause (13) the following new clause "; (14) provide (A), effective July 1, 1969, for meeting (in conjunction with other income that is not disregarded, or set aside for future needs, under the plan and other resources) all the need, as determined in accordance with standards applicable under the plan for determining need, of individuals eligible to receive aid to families with dependent children (and such standards shall be no lower than the standards for determining need in effect on January 1, 1967), and (B), effective July 1, 1968, for an annual review of such standards and (to the extent prescribed by the Secretary) for up-dating such standards to take into account changes in living costs".

(c) Section 1002(a) of such Act is amended by striking out "and" at the end of clause (12) and by inserting before the period at the end thereof after clause (13) the following: "; and (14) provide (A), effective July 1, 1969, for meeting (in conjunction with other income that is not disregarded under the plan and other resources) all the need, as determined in accordance with standards applicable under the plan for determining need, of eligible individuals (and such standards shall be no lower than the standards for determining need in effect on January 1, 1967), and (B), effective July 1, 1968, for an annual review of such standards and (to the extent prescribed by the Secretary) for up-dating such standards to take into account changes in living costs".

(d) Section 1402(a) of such Act is amended by striking out "and" at the end of clause (11) and by inserting before the period at the end thereof after clause (12) the following: "; and (13) provide (A), effective July 1, 1969, for meeting (in conjunction with other income that is not disregarded under the plan and other resources) all the need, as determined in accordance with standards applicable under the plan for determining need, of eligible individuals (and such standards shall be no lower than the

standards for determining need in effect on January 1, 1967), and (B), effective July 1, 1968, for an annual review of such standards and (to the extent prescribed by the Secretary) for up-dating such standards to take into account changes in living costs".

(e) Section 1602(a) of such Act is amended by striking out "and" at the end of paragraph (16), the period at the end of paragraph (17) and inserting "; and" in lieu thereof, and by adding after such paragraph (17) the following new paragraph:

"(18) provide (A), effective July 1, 1969, for meeting (in conjunction with other income that is not disregarded under the plan and other resources) all the need, as determined in accordance with standards applicable under the plan for determining need, of eligible individuals (and such standards shall be no lower than the standards for determining need in effect on January 1, 1967) and (B), effective July 1, 1968, for an annual review of such standards and (to the extent prescribed by the Secretary) for updating such standards to take into account increases in living cost."

Income in Determining Eligibility

Sec. 203. (a) Section 2(a)(10)(A) of the Social Security Act is amended by inserting before the semicolon at the end thereof the following: "and (iii) effective July 1, 1969, the State agency shall not consider such individual's (or his family's) income (that is not disregarded under the plan) a basis for finding that he is not in need, if such income is less than 66⅔ percent of the amount of income established for individuals (or their families) under subsection (f) (1) of section 1903 in determining whether payments pursuant to such section may be made for expenditures for medical assistance with respect to such individuals (or families) and for such purposes the provisions of paragraph (3) of such subsection (f) shall apply".

(b) Section 402(a)(7) of such Act is amended—

(1) by striking out "and" at the end of clause (B) thereof; and

(2) by inserting before the semicolon at the end thereof the following: ", and (D) effective July 1, 1969, the State agency shall not consider such individual's (or his family's) income (that is not disregarded, or set aside for future need, under the plan) a basis for finding that he (or the family) is not in need if such income is less than 66⅔ percent of the amount of income established for individuals (or their families) under subsection (f)(1) of section 1903 in determining whether payment pursuant to such section may be made for expenditures for medical assistance with respect to such individuals (or families) and for such purposes the provisions of paragraph (3) of such subsection (f) shall apply".

(c) Section 1002(a)(8) of such Act is amended—

(1) by striking out "and" at the end of clause (B) thereof; and

(2) by inserting before the semicolon at the end thereof the following: ", and (D) effective July 1, 1969, the State agency shall not consider such individual's (or his family's) income that is not disregarded under the plan a basis for finding that he is not in need is less than 66⅔ percent of the amount of income established for individuals (or their families) under subsection (f)(1) of section 1903 in determining whether payments pursuant to such section may be made for expenditures for medical assistance with respect to such individuals (or families) and for such purposes the provisions of paragraph (3) of such subsection (f) shall apply".

(d) Section 1402(a)(8) of such Act is amended—

(1) by striking out "and" at the end of clause (B) thereof; and

(2) by inserting before the semicolon at the end thereof the following: ", and (D) effective July 1, 1969, the State agency shall not consider such individual's (or his family's) income (that is not disregarded under the plan) a basis for finding that he is not in need if such income is less than 66⅔ percent of the amount of income established for individuals (or their families) under subsection (f)(1) of section 1903 in determining whether payments pursuant to such section may be made for expenditures for medical assistance with respect to such individuals (or families) and for such purposes the provisions of paragraph (3) of such subsection (f) shall apply".

(e) Section 1602(a)(14) of such Act is amended—

(1) by striking out "and" at the end of subparagraph (C);

(2) by adding "and" at the end of subparagraph (D); and

(3) by adding after subparagraph (D) (as amended by paragraph (2) of this subsection) the following new subparagraph:

"(E) effective July 1, 1969, the State agency shall not consider such individual's (or his family's) income (that is not disregarded under the plan) a basis for finding that he is not in need if such income is less than 66⅔ percent of the amount of income established for individuals or families under subsection (f)(1) of section 1903 in determining whether payments pursuants to such section may be made for expenditures for medical assistance with respect to such individuals (or families) and for such purposes the provisions of paragraph (3) of such subsection (f) shall apply".

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(page 79):

Committee on Ways and Means

U. S. House of Representatives

Ninetieth Congress

First Session

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Section-by-Section Analysis
And Explanation of Provisions of
H.R. 5710

The "Social Security Amendments of 1967"

As Introduced on February 20, 1967

Prepared and Furnished by
The Department of Health, Education,
and Welfare

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20. Adequate Support for Needy Children

*Background*

A family of four with an income of $3,100 or less is living in poverty, as defined by the Social Security Administration and the Office of Economic Opportunity. A family at this level or below is considered to be too poor to provide for its basic human needs in the United States today.

More than 3 million children in families dependent on public assistance live below the poverty level. In figuring public assistance payments, each of the 50 States makes its own definition of minimum need. Although a few States define need at or above the poverty level, no State pays as much as that amount.

Moreover, 33 States provide less support for needy children than the standards the States themselves have set as necessary to meet basic human needs. The record for these 33 States is shown in the table below, which shows actual support for needy children as a percentage of the State's own minimum standard:

| *States* | *Percent* |
|---|---|
| Oregon, California, New Mexico, Idaho | 90-99 |
| Colorado, South Dakota, West Virginia, Ohio, Virginia, Wyoming, Washington | 80-89 |
| Kentucky, Michigan, Iowa, Utah | 70-79 |
| Georgia, Tennessee, Texas, Vermont, Louisiana, Delaware | 60-69 |
| Maine, Arkansas, Arizona, Missouri | 50-59 |
| Nevada, South Carolina, Indiana, Nebraska | 40-49 |
| Alaska, Alabama, Florida | 30-39 |
| Mississippi | 20-29 |

In seven States — Alabama, Arkansas, Florida, Georgia, Mississippi, South Carolina, and West Virginia — a family consisting of a mother and three children receiving assistance must live on less than $120 a month.

Low levels of financial aid make it difficult or impossible for dependent families to buy the basic necessities for their children: decent food, clean, warm housing, medical care, clothing. Low levels of aid tend to keep families and children dependent.

*The proposal*

The President proposes legislation to require the States to meet their own standards of what is needed to support a child by July 1969.

The Social Security Act would be amended to require States to meet minimum need as each State itself defines it (see table attached) in its AFDC program.

States would also be required to bring their standards of need up to date by July 1, 1969, and to update them annually thereafter. Even though about half the States updated their minimum standards this year, most States have not been doing so annually.

The amendment would also require States to maintain their standards of need at a level not less than two-thirds of the income level set for medical assistance eligibility. That is, if a family of four is eligible for medical assistance with an income up to $3,800, for example, then the mini-

mum income standard for AFDC payments could not be less than $2,533.

*Aid to families with dependent children: Percent that highest monthly amount payable for basic needs for family of specified composition and living in rented quarters represents of total monthly cost standard for basic needs of such family, by State, January 1965*[1]

| State | Family consisting of mother (35), boy (14), girl (9), and girl (4), and living in rented quarters[2] | | |
|---|---|---|---|
| | Total monthly cost standard for basic needs | Highest monthly amount payable for basic needs[3] | Percent col. II is of col. I |
| | (I) | (II) | (III) |
| Alabama | $177.00 | $ 67.26 | 38.0 |
| Alaska | 376.00 | 140.00 | 37.2 |
| Arizona | 232.00 | 134.00 | 57.8 |
| Arkansas | 124.00 | 71.00 | 57.3 |
| California | 229.40 | 215.00 | 93.7 |
| Colorado | 173.00 | 141.62 | 81.9 |
| Connecticut | 230.35 | 230.35 | 100.0 |
| Delaware | 214.00 | 149.00 | 69.6 |
| District of Columbia | 166.00 | 166.00 | 100.0 |
| Florida | 201.00 | 78.00 | 38.8 |
| Georgia | 181.35 | 109.00 | 60.1 |

[1] Includes data for 53 States; data not available for Guam.

[2] The specified type of family is assumed to need amounts for rent and utilities that are at least as large as the maximum (or other) amounts reported by the State for these items. The family is also assumed to have no income other than assistance.

[3] For the specified type of family represents the smallest of the following: (1) The amount of the State's usual legal or administrative maximum on money payments to recipients; (2) an amount resulting from the application of a percentage or flat reduction to the amount of determined need; or (3) the amount of the total cost standard for basic needs (for States with usual legal or administrative maximums above the total cost standard for basic needs and for States without such maximums).

| State | Family consisting of mother (35), boy (14), girl (9), and girl (4), and living in rented quarters | | |
|---|---|---|---|
| | Total monthly cost standard for basic needs | Highest monthly amount payable for basic needs | Percent col. II is of col. I |
| | (I) | (II) | (III) |
| Hawaii | 197.20 | 197.20 | 100.0 |
| Idaho | 209.10 | 201.10 | 96.2 |
| Illinois | 187.36 | 187.36 | 100.0 |
| Indiana | 223.87 | 110.00 | 49.1 |
| Iowa | 253.70 | 190.28 | 75.0 |
| Kansas | 185.09 | 185.09 | 100.0 |
| Kentucky | 193.00 | 136.64 | 70.8 |
| Louisana | 164.75 | 108.00 | 65.6 |
| Maine | 222.00 | 124.00 | 55.9 |
| Maryland | 167.50 | 167.50 | 100.0 |
| Massachusetts | 221.20 | 221.20 | 100.0 |
| Michigan | 223.00 | 160.00 | 71.7 |
| Minnesota | 202.27 | 202.27 | 100.0 |
| Mississippi | 175.62 | 50.00 | 28.5 |
| Missouri | 188.95 | 110.00 | 58.2 |
| Montana | 216.75 | 216.75 | 100.0 |
| Nebraska | 261.50 | 130.00 | 49.7 |
| Nevada | 259.75 | 120.00 | 46.2 |
| New Hampshire | 183.00 | 183.00 | 100.0 |
| New Jersey | 245.80 | 245.80 | 100.0 |
| New Mexico | 195.50 | 185.72 | 95.0 |
| New York | 255.65 | 255.65 | 100.0 |
| North Carolina | 152.50 | 152.50 | 100.0 |
| North Dakota | 233.00 | 233.00 | 100.0 |
| Ohio | 165.00 | 142.50 | 86.4 |
| Oklahoma | 163.00 | 163.00 | 100.0 |
| Oregon | 198.75 | 185.24 | 93.2 |
| Pennsylvania | 163.40 | 163.40 | 100.0 |
| Puerto Rico | 82.26 | 27.15 | 33.0 |

| State | Family consisting of mother (35), boy (14), girl (9), and girl (4), and living in rented quarters | | |
|---|---|---|---|
| | Total monthly cost standard for basic needs | Highest monthly amount payable for basic needs | Percent col. II is of col. I |
| | (I) | (II) | (III) |
| Rhode Island | 167.55 | 167.55 | 100.0 |
| South Carolina | 148.25 | 72.00 | 48.6 |
| South Dakota | 225.50 | 180.40 | 80.0 |
| Tennessee | 160.45 | 100.00 | 62.3 |
| Texas | 153.95 | 98.00 | 63.7 |
| Utah | 227.40 | 176.00 | 77.4 |
| Vermont | 213.65 | 140.00 | 65.5 |
| Virgin Islands | 104.00 | 104.00 | 100.0 |
| Virginia | 187.00 | 162.50 | 86.9 |
| Washington | 238.30 | 209.70 | 88.0 |
| West Virginia | 143.97 | 122.37 | 85.0 |
| Wisconsin | 225.75 | 225.75 | 100.0 |
| Wyoming | 229.80 | 200.00 | 87.0 |

## SUPPLEMENTAL OPINION ON MOTION

WINTER, Circuit Judge:

After the filing of our opinion in this case, defendants filed a multi-faceted motion, purportedly under Rules 52(b) and 59, *Fed. R. Civ. P.*, in which they ask, alternatively, that we amend our findings of fact and judgment, grant a new trial, or receive additional evidence and alter or amend the judgment. Basically, the new or additional facts that defendants want us to consider are not in the nature of newly-discovered evidence; and no compelling excuse is offered as to why they were not previously brought to our attention.[1] Understandably, plaintiffs vigorously question

[1] The facts, themselves, are not in dispute. They were stipulated to be true in open court at the hearing on the motion; others were the subject of a post-hearing written stipulation.

defendants' right to proceed, and they cite persuasive authority in support of their position.

The case is an important one. Proof has been offered to establish that twenty-seven states have maximum grant regulations similar to that of Maryland; other litigation questioning their validity is pending in other courts. In an effort to arrive at a correct decision, we should give full and complete consideration to all relevant materials. We prefer, therefore, to deal with the motion on its facts and the merits of the contentions it presents, rather than on the procedural grounds urged by the plaintiffs.

As will appear from what is said hereafter, the motion is granted in part and denied in part.

I.

In regard to the question of the proper construction to be placed on the Social Security Act of 1935, as amended, and whether the Maryland maximum grant regulation conflicts therewith, defendants point out that Maryland has had a maximum grant regulation in some form continuously since January 1, 1947. It is asserted that the Secretary of Health, Education and Welfare (HEW) has "approved" the Maryland regulation, as well as its counterpart in some twenty-seven other states, and that this "approval" is entitled to great weight, if, indeed, it is not conclusive, in deciding whether the regulation conflicts with any provision of the Act. The text of the maximum grant regulations in other states is not before us; nor is any evidence of how they are applied. Finally, it is contended that the legislative history of clause 9 of § 402[2] indicates that it has a more restrictive

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[2] Clause 9 is the portion of § 402, 42 U.S.C.A. § 602, which requires that a State AFDC plan *must* include a provision:

> "(9) * * * effective July 1, 1951, that all individuals wishing to make application for aid to families with dependent children shall have the opportunity to do so, and that aid to families with dependent children shall be furnished with reasonable promptness to all eligible individuals * * *."

Since the 1968 amendments, clause 9 has become clause 10 of § 402 .

meaning than the one we ascribed to it, so that there is no conflict between it and the regulation.

We accept the correction that the Maryland maximum grant regulation is not new and that it has its counterpart elsewhere. We find that HEW has never expressly disapproved the regulation; whether it has approved it is another matter, as is the legal effect of what has been done. We state first, drawing on the parties' stipulation, what HEW has and has not done.

HEW has at no time issued any regulations dealing specifically with the problem of maximum grant regulations, nor has it circulated any reasoned decisions or statements detailing its position. Indeed, there is no indication whatever that any of the arguments urged in this proceeding or adopted in our previous opinion have been presented to HEW. The sole contacts which HEW has had with the regulation in issue, so far as we are informed by the parties, are as follows: (1) at various times HEW has "incorporated" revisions of the maximum grant regulation into Maryland's previously approved AFDC plan; (2) HEW issued, in October, 1962, a booklet entitled "State Maximums and Other Methods of Limiting Money Payments to Recipients," which details, *inter alia*, the AFDC maximum grants in the respective states employing such regulations; (3) an Interim Policy Statement of May 31, 1968, specifies that a state AFDC plan must provide by July 1, 1969, for increases in any maximum grants in order to reflect changes in living costs.

From the foregoing, we distill the obvious, namely, that HEW implicity considers maximum grant regulations not to be violative of the Act. In view of the fact, however, that there is no indication from administrative decision, promulgated regulation, or departmental statement that the question of the conformity of maximum grants to the Act has been given considered treatment,[3] we believe that

[3] Some corroboration for this statement is found in the implicit assumption in the discussion of maximum family grants, Note, *Welfare's "Condition X,"* 76 Yale L. J. 1222, 1232-33 (1967).

the various actions and inactions on the part of HEW are not entitled to substantial, much less to decisive, weight in our consideration of the instant case.

In adopting this view, we cast no doubt whatsoever upon the general doctrine that the views of administrative agencies entrusted with the administration of a statute are to be given due deference when issues of statutory interpretation arise. See, generally, Annot., *Administrative or Practical Construction of Statute as Precedent for Judicial Construction*, 84 L. Ed. 28 (1939). Nevertheless, whether administrative interpretation in the abstract is deemed to be "pertinent," to have "weight," to have "persuasive weight," or to be of such significance that it "ought not to be overruled without cogent reasons," *Anderson v. McKay*, 211 F. 2d 798, 805 (D.C. Cir.), *cert. den.*, 348 U.S. 836 (1954), the attitudes, practices and interpretations of an administrative agency are certainly not absolute rules of law but, at best, merely "helpful guides to aid courts in their task of statutory construction." *Sims v. United States*, 252 F. 2d 434, 438 (4 Cir. 1958), *aff'd*, 359 U.S. 108 (1959). The ultimate authorities on issues of statutory interpretations are the courts, *Volkswagenwerk v. FMC*, 390 U.S. 261, 272 (1968), which have the final responsibility to declare what a statute means. *Fishgold v. Sullivan Drydock & Repair Corp.*, 154 F. 2d 785, 790 (2 Cir.) (L. Hand, J.), *aff'd*, 328 U.S. 275 (1946). To the same effect, see, *e.g.*, *Folsom v. Pearsall*, 245 F. 2d 562, 564-65 (9 Cir. 1957); *Commissioner v. Winslow*, 113 F. 2d 418, 423 (1 Cir. 1940). Where a conflict arises between the administrative and judicial constructions of a statute, the latter will necessarily prevail. *Deeg v. Lumbermen's Mut. Cas. Co.*, 279 F. 2d 491, 494 (10 Cir. 1960); *Cory Corp. v. Sauber*, 266 F. 2d 58, 61 (7 Cir. 1959), *rev'd on other grounds*, 363 U.S. 709 (1960); *Louisiana Pub. Serv. Comm'n v. SEC*, 235 F. 2d 167, 172 (5 Cir. 1956), *rev'd on other grounds*, 353 U.S. 368 (1957); Woods *v. Benson Hotel Corp.*, 177 F. 2d 543, 546 (8 Cir. 1949). See, 1 Davis, *Administrative Law Treatise*, § 5.06, at 326-328 (1958). In determining the proper weight to be accorded to an administrative decision, account must be taken of the consistency of the agency's interpretation with the under-

lying purposes of the statute which is being construed. *P. Lorillard Co. v. FTC*, 267 F. 2d 439, 443 (3 Cir.), *cert. den.*, 361 U.S. 923 (1959). In no event is a court "compelled to follow an administrative interpretation that it regards as inconsistent with the legislative purpose of the provision in issue." *In re Petition of Chin Thloot Har Wong*, 224 F. Supp. 155, 165 (S.D. N.Y. 1963).

Furthermore, it is clear that the thoroughness with which an administrative agency has dealt with a particular problem of statutory construction is a highly relevant factor in determining the weight to be assigned to the agency's resolution of the matter. Such weight will be dependent upon "the thoroughness evident in * * * [the agency's] consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade, if lacking power to control." *Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1944). If the agency's construcion has resulted from an uncontested non-adversary proceeding, it has been said that the agency's interpretation is entitled to "relatively little weight." *SEC v. Sterling Precision Corp.*, 393 F. 2d 214, 220 (2 Cir. 1968). See, *Fishgold v. Sullivan Drydock & Repair Corp.*, 328 U.S. 275, 290 (1946). Finally, to the argument that Congress has not stepped in to alter or amend HEW's apparent interpretation that Maryland's maximum grant regulation conforms to the Act, we are reminded of our Court of Appeals' admonition that "courts are properly chary of equating mere inaction with approval, in the absence of a solid foundation for the inference of conscious ratification [by Congress]." *Duncan v. Railroad Retirement Bd.*, 375 F. 2d 915, 919 (4 Cir. 1967).

If the unequivocal command that "aid * * * shall be furnished with reasonable promptness to *all* eligible individuals," were all that we must consider, we would not be disposed, in the light of the legal principles which we have set forth and of the limited nature of the administrative action taken by HEW in regard to maximum grant regulations, to assign controlling significance to HEW's apparent views. To the extent that these views hold that maximum grant regulations are consistent with the language and

purposes of the Act, we would decline to follow them. See, *King v. Smith*, 392 U.S. 309, 333, n. 34 (1968).

We turn to the argument that the legislative history of clause 9 demonstrates that it has a more restricted meaning than we have given it. Essentially, defendants' argument is that the portion of the Social Security Act Amendments of 1950, 64 Stat. 549, which added clause 9, on which we placed principal reliance in concluding that there was a conflict between the regulations and the Act, was addressed to a practice in Maryland and in other states of dealing with revenue crises in AFDC by instituting a freeze on the receipt of new AFDC applications, rather than to devise some other uniform or equitable way of reducing AFDC expenditures. The requirement of clause 9 — "that all individuals wishing to make application for aid to families with dependent children shall have the opportunity to do so" — was, so the argument runs, specifically directed to this practice. The "all eligible individuals" to whom aid must be furnished, the argument continues, are the applicants for aid referred to in the beginning of clause 9, and not the family members benefited by the application.

We reject defendants' second argument for the reasons set forth in footnote 9 of our original opinion. Although clause 9 may contemplate that the application for aid be made by a responsible adult, child-care institution, child-placement or child-care agency, it requires that the amount of aid granted be commensurate with the needs of all of those on behalf of whom an application is made. Defendants' argument is essentially that the command of the entire clause is met if the applicant, i.e., the responsible adult, is furnished some aid, even though the amount is less than that which the state has determined is the extent of need and appropriate benefit for the members of his family. If his needs as an individual are satisfied in whole or in part, the clause requires no more. The basic purpose of AFDC to provide support for "dependent children" makes the hollowness of this argument manifest.

We see nothing inconsistent between the claimed legislative intent as expressed in clause 9 and the liberal meaning

we have given it. If the evil to be corrected was the states' freezing consideration of new applications for aid, it would not be unreasonable for Congress to say that the application should be received, and considered, and that the amount of aid should be granted promptly to *all* who were eligible, lest some state devise some other subterfuge, such as receiving an application and considering it but postponing any benefits thereon or granting less than the benefits indicated thereon until it was financially more convenient to do so.

More importantly, closer scrutiny of the legislative materials relevant to the purposes of clause 9 satisfies us that we have not expanded its meaning beyond the initial legislative intent in its enactment. The basic purpose of clause 9 was explained in the report of the House of Representatives where the bill, H.R. 6000, which added clause 9, originated.[4] H.R. 6000 was not reported by the Senate until the following session, and, while the House version required

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[4] The pertinent sections of the report read:

"D. Opportunity to apply for and receive assistance promptly

Shortage of funds in aid to dependent children has sometimes, as in old-age assistance, resulted in a decision not to take more applications or to keep eligible families on waiting lists until enough recipients could be removed from the assistance rolls to make a place for them. As noted in the discussion of this problem in the section on old-age assistance, this difference in treatment accorded to eligible people results in undue hardship on needy persons and is inappropriate in a program financed from Federal funds. The requirement that State plans must provide opportunity to apply to all persons wishing to do so and that assistance shall be furnished promptly to all eligible families is included in the proposed amendments to title IV of the Social Security Act."

* * * * * *

"Requirement relating to opportunity to apply for assistance and receive it promptly

The provisions of section 3(a) of the Social Security Act are also amended by the bill by the addition of a new clause (9). This clause would add a specific requirement designed to make it clear that a State plan, in order to be approved, must provide that all individuals wishing to make application for assistance shall have an opportunity to do so and that assistance shall be furnished promptly to all eligible individuals. This new requirement would take effect July 1, 1951."

H. R. Rep. No. 1300, 81st Cong., 1st Sess., pp. 48, 148 (1949).

a state to furnish aid "promptly," clause 9 was amended in the Senate to require a state to furnish aid "with reasonable promptness." This substitution in phraseology was thought to assure that a state would have sufficient time to make investigations. It was the only amendment; otherwise, the Senate sought to achieve the same objectives as the House.[5] It should be stressed that H.R. 6000 also expanded AFDC (which was theretofore a program solely of aid to children) to include the relative with whom any dependent child is living. The purpose of the expansion was described in the report of the House Committee.[6] The essential emphasis,

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[5] "Title III — Amendments to Public Assistance and Maternal and Child Welfare Provisions of the Social Security Act

Requirements of State Plans

* * * * * *

Requirements relating to opportunity to apply for and receive assistance

The provisions of section 3(a) of the Social Security Act are also amended by the bill by the addition of a new clause (9). This clause would add a specific requirement designed to make it clear that a State plan, in order to be approved, must provide that all individuals wishing to make application for assistance shall have an opportunity to do so and that assistance shall be furnished with reasonable promptness to all eligible individuals. This new requirement would take effect July 1, 1951.

The same addition has been made by sections 321 and 341 of the bill to sections 402(a) and 1002(a), respectively, of the Social Security Act, although in the latter case the new clause is numbered (11).

These amendments proposed by the bill are the same in substance as those proposed on the same subject by the bill as passed by the House except that the latter would have required the assistance to be furnished 'promptly' instead of 'with reasonable promptness' as proposed by your committee. The change was made in order to assure the States reasonable time to make investigations and complete any other action necessary to determine eligibility and extent of need for assistance."

S. Rep. No. 1669, 81st Cong., 2nd Sess.; 2 U. S. Code Cong. Ser. 3470-71 (1950).

[6] "XIV. Aid to Dependent Children

* * * * * *

"A. Inclusion of mother or other relative caring for child

In the present law, aid to dependent children is defined as payments with respect to a dependent child. No specific provi-

in this statement, on the needs of the dependent children, and the concept that aid to the relative with whom the children were living was necessary *so as not to diminish the realizable benefit to the children* belies the interpretation of clause 9 pressed by defendants.

Inexplicably, however, Congress, in the Social Security Amendments of 1967, P. L. 90-248, 81 Stat. 821, amended § 402 of the Act in a manner which may have a substantial effect on the apparent conflict between the regulation and the Act. The record, however, is insufficient for us to express any final conclusion.

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sion is made for the need of the parent or other relative with whom the child is living. Particularly in families with small children, it is necessary for the mother or another adult to be in the home full time to provide proper care and supervision. Since the person caring for the child must have food, clothing, and other essentials, amounts allotted to the children must be used in part for this purpose if no other provision is made to meet her needs. The maximum monthly amount of assistance in which the Federal Government will now share is $27 for one child in a family and $18 for each child beyond the first.

Because of the lack of specific provision for Federal participation in assistance to the mother or other relative and the inadequacy of the $27 and $18 maximums to cover the cost of essentials for the children and an adult as well, States have been forced to make a very large proportion of payments larger than the maximum amounts subject to Federal sharing. In December 1948 about one-half of all payments were above the maximums. More than three-fourths of all payments exceeded these amounts in 24 States. Often States have been unable to make payments that were at all realistically related to the need of the dependent children and the relative caring for them.

To correct the present anomalous situation wherein no provision is made for the adult relative and to enable States to make payments that are more nearly adequate, the bill would include the relative with whom the dependent child is living as a recipient for Federal matching purposes. The maximum amount of assistance for a relative in which the Federal Government would share would be $27. The maximums of $27 for one child in a family, and $18 for each additional child, would remain unchanged. Thus, for a relative and one dependent child the maximum amount of the payment subject to Federal sharing would be $54 instead of $27. For a three-child family, the maximum would be $90 instead of $63."

H. R. Rep. No. 1300, 81st Cong., 1st Sess., pp. 45-46 (1949).

The amendment, contained in § 213(b) of the Act, cited as Social Security Amendments of 1967, added a new clause to § 402(a), to be known as clause 23, which requires, as an additional condition, that a state AFDC plan must:

> "provide by July 1, 1969, the amounts used by the State to determine the needs of individuals will have been adjusted to reflect fully changes in living costs since such amounts were established, *and any maximums that the State imposes on the amount of aid paid to families will have been proportionately adjusted.*" (Emphasis supplied.)

Section 213(a) amended various other sections of the original Act to provide that recipients under various programs need not suffer a reduction in benefits if they had income up to $7.50 per month, instead of the previous ceiling of $5.00 per month, i.e., 42 U.S.C.A. §§ 302(a)(1)(A)(i) [state old-age and medical assistance plans], § 1202(a)(8)(C) [state plans for aid to blind], § 1352(a)(8)(A) [state plans for the permanently and totally disabled], and § 1384(a)(14)(D) [state plans for aid to aged, blind or disabled or for such aid and medical assistance for aged].

Section 213 of the amending Act was added to the House Bill by amendment in the Senate, later concurred in by the House.[7] As it shows on its face, § 213(b) was designed to increase benefits to keep pace with increased living costs. The references to it in the committee reports are no more informative.[8] Elsewhere in the extensive amendments to

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[7] See discussion in Conference Report No. 1030, 90th Cong., 1st Sess., 2 U. S. Code Cong. Ser. 3179, 3208 (1967).

[8] Clause 23 was added by § 213(b) of the amending Act. As passed by the Senate, the amending Act added clause 23 by § 213(a) and referred to clause 23 as clause 24. In the Senate Report, the following was said:

> "Paragraph (5) of section 213(a) of the bill amends section 402(a) of the Act by adding (after the new clause (23) added to such sec. 402(a) of the act by sec. 211(a) of the bill) a new clause (24) which requires a State plan for the dependent children program to provide that by July 1, 1969, and at least annually thereafter, the amounts used by the State to determine the

**the original Act, benefits were increased generally,[9] the conditions attaching to AFDC benefits were liberalized to encourage AFDC recipients to make the transition to becoming self-supporting, and new protections to children in AFDC families and provisions to make more certain the fulfillment of parental responsibilities were added.[10]**

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needs of individuals will be adjusted to reflect fully changes in living costs since such amounts were established, and that any maximums that the State imposes on the amount of aid paid to families will be proportionately adjusted."

Senate Report No. 744, 90th Cong., 1st Sess., 2 U. S. Code Cong. Ser. § 133 (1967).

The Conference Report which recommended concurrence in the Senate amendment contained no discussion of its purpose or need, beyond the barest description of its terms. Conference Report No. 1030, 90th Cong., 1st Sess., 2 U. S. Code Cong. Ser. § 209 (1967).

[9] See, *e.g.*, Senate Report No. 744, 90th Cong., 1st Sess., 2 U. S. Code Cong. Ser. 2834, 2835 [old-age, survivors, and disability insurance], 2836 [health insurance], 2838 [public assistance].

[10] Senate Report No. 744, op. cit. n. 8. At p. 2837, the general program in this report was thus summarized:

"Aid To Families With Dependent Children

The bill would make the following reforms in the aid to families with dependent children programs:

(1) For the purpose of providing greater incentives for appropriate members of families drawing aid to families with dependent children (AFDC) payments to obtain employment so that they need no longer be dependent on the welfare rolls the bill would—

(a) exempt a portion of earned income for members of the family who can work;

(b) establish a new work incentive and training program for individuals to be administered by the Department of Labor upon referral by the State welfare agency;

(c) require State welfare agencies to assure adequate child care arrangements for the children of working mothers;

(d) require the State welfare agencies to establish a social service plan for each AFDC family; and

(e) modify the optional unemployed fathers program to provide for a uniform definition of unemployment throughout the United States.

In order to enable the States to implement these requirements, the Federal Government would supply Federal matching for services (including child welfare and day care) which the States

**In the context in which clause 23 was added, that is to say, having regard to the overall amendments to the AFDC program made by the amending Act, we find it difficult to say that §213(b) represented a considered judgment by Congress that it wished to validate all maximum grant regulations and that it wished to depart from the basic**

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would be required to furnish. Federal matching would also be provided for training, supervision, materials, and other items and services needed in the work incentive program."

The provisions of existing law and proposed changes to liberalize the earnings exemptions of dependent children are described at p. 2861.

The overall changes in the AFDC program are summarized at pp. 2982-83, as follows:

"The plan which the committee has developed, with the advice and help of the Department of Health, Education, and Welfare and the Department of Labor amounts to a new direction for AFDC legislation. It follows that the basic outline of the bill passed by the House but incorporates certain desirable changes in the method of administration and program emphasis. The committee is recommending the enactment of a series of amendments to carry out its intent of reducing the AFDC rolls by restoring more families to employment and self-reliance.

The first series of amendments is designed to encourage and make possible the employment of adults in AFDC families. Three provisions are aimed at this purpose:

(1) the establishment of a work incentive program under the Department of Labor for the purpose of restoring members of AFDC families (including those with little or no work experience) to regular employment through counseling, placement services and training, and arranging for all others to get paid employment in special work projects to improve the communities in which they live;

(2) A requirement that all States furnish day-care services and other social services to make it possible for adult members of the family to take advantage of the work and training opportunities under the work incentive program; and

(3) A requirement that all States exempt part of the AFDC recipient's earnings to provide incentives for work in regular employment.

The second series of amendments would set up new protection for the children in AFDC families and would make more certain the fulfillment of parental responsibilities:

(1) A requirement that the States establish a comprehensive plan of social services for each AFDC child to assure

objectives of prior Congresses, reaffirmed by it, that benefits under AFDC be granted to *all* eligible individuals and that to the maximum extent feasible for their interest dependent children be kept in their own family units.[11] The brevity of the discussion of §213(b) in the legislative reports, as compared to the considered treatment of other amendments, leads to the reasonable assumption that Congress gave no real thought to the effect of maximum grant

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the child the maximum opportunity to become a productive and useful citizen;

(2) A requirement that State welfare agencies refer cases of child abuse or neglect to appropriate law-enforcement agencies and courts;

(3) A requirement that protective payments and vendor payments be made where appropriate to protect the welfare of the children;

(4) Federal payments for additional foster care situations under the AFDC program;

(5) A requirement to assure that fathers who desert or abandon their families will contribute to the support of their families by using available tax records and the enforcement power of the Internal Revenue Service. In addition, there would be a requirement that the States establish separate units to enforce the child-support laws, including financial help to the courts and prosecuting agencies to enforce court orders for support; and

(6) A program of emergency assistance to families with minor children for a temporary period.

(7) A more definitive and uniform program for the children of unemployed fathers.

The third series of amendments would make other changes in the program designed to deal with the expanding AFDC rolls.

(1) A requirement that all States establish programs to reduce the number of children born out of wedlock; and

(2) A requirement that all States offer family planning services to appropriate AFDC recipients."

[11] As part of the amending Act, Congress also amended § 401, 42 U.S.C.A. §601, in a technical respect not itself significant here. What is significant is that an amendment was made to the section containing the recital that a purpose of AFDC was "to help maintain and strengthen family life" without any alteration thereof. Presumably, family life is stengthened and maintained by holding a family together. Yet, as has been previously shown, the Maryland maximum grant regulation in its operation encourages the very opposite.

regulations in its oft-expressed basic legislative purposes, but simply concluded that if it was increasing benefits generally it should include a direction that maximum grants should be increased, also. Yet, clause 23 is unmistakable recognition by Congress that some states have maximum grant regulations, and, utilizing accepted canons of statutory construction, we are bound to give effect to this recognition.

The problem is what is the scope of Congressional recognition and implied approval of maximum grant regulations. The language of Congress in clause 23 is general and the Congressional intent expressed therein is uncertain. Manifestly, it cannot validate that which the Constitution does not permit. Equally important, it must be construed in the light of all other provisions of the Social Security Act, as amended, so as to achieve an harmonious whole. Even if clause 23 is treated as an implied amendment of clause 9, we do not know, and the parties have offered no proof to show us, what are the terms and provisions of the maximum grant regulations of other states and how they are applied. To be specific, we do not know if they are similar and are uniformly applied like that of Maryland to encourage the disbanding of large families so that Congressional recognition may be deemed an amendment of §402 of the Act, as well as a departure from the original legislative intent of clause 9 and the underlying purposes of the AFDC program to strengthen family life.

In short, clause 23 may well be properly construed to imply recognition by Congress of the concept of maximum grant regulations in the abstract without the additional implication that a congressional imprimatur has been placed upon every conceivable maximum grant regulation, no matter what its operative effects may be in furthering or retarding basic congressional policy. Thus, while Congress has indicated its view that a maximum grant regulation is not *per se* in conflict with the Act, prior to the 1967 amendments, as we have construed it, we cannot, on the present record, impute to Congress the intention to endorse specifically the Maryland regulation with its pernicious results, absent a statement of endorsement or cir-

cumstances of endorsement which speak with unmistakable clarity. In other circumstances, we would direct the parties to present additional proof to enable us to resolve this issue. We do not find this necessary in the instant case, however, because we are still satisfied that the regulation cannot hurdle the constitutional barrier of the equal protection clause.

II.

In regard to the question of whether Maryland's maximum grant regulation denies equal protection of the law, the evidence before us at the original trial was crystal-clear that the only reason why the maximum grant regulation was continued was financial, i.e., that the Governor and General Assembly of Maryland had failed to appropriate sufficient funds to finance the cost of AFDC, absent the operative effect of the maximum grant regulation in reducing expenditures. Now defendants assert that, at least initially, the maximum grant regulation was rationally supportable for constitutional purposes on the basis of the so-called "principle of less benefit." The thrust of the principle in the case at bar is that public assistance or welfare programs should not serve as an inducement to individuals to abandon useful employment, or to decline useful employment, or to abandon their families and the obligation to support them. Accordingly, the benefits derivable from such assistance should, in no event, be greater than the remuneration which could be achieved from gainful employment. In order to achieve this result, so the argument runs, the maximum grant is keyed to the minimum wage, so that an individual family receiving assistance would obtain no more than a family in which one member thereof was employed at the minimum wage level.

Specifically, under the principle of "less benefit," defendants assert that the maximum grant regulation serves a rational function in that it (a) discourages desertion of children by the wage earner or the wage earners of the family, (b) it provides an inducement to a surviving parent to seek employment, and (c) it encourages parents to limit the sizes of their families.

Even if we assume that the maximum grant regulation was adopted for the purposes that defendants assert,[12] and even if we accept the contention that the validity of the regulation under the equal protection clause may be saved by the original purposes for its promulgation, notwithstanding that those are not the purposes for its continuance, we find no merit in the argument that the less benefit principle may validate this regulation. We reach this conclusion because the regulation on its face is not limited to any subcategories of AFDC eligibles, but purports to apply, and is applied, to AFDC eligibles as a group. While the purposes which defendants assert may have a logical connection with one or more subcategories of AFDC eligibles, alone or in combination, they have no logical connection with the group as a whole; hence, the regulation is invalid on its face for overreaching. We turn to a consideration of the claimed rational functions which defendants assert.

AFDC is not limited to dependent children or families with dependent children deprived of parental support or care by reason of continued absence from the home. Discouragement of desertion as a rational basis for the maximum grant regulation can have application only to the continued absence subcategory of AFDC; it can have no application to dependency which arises because of death, unemployment, or physical or mental incapacity of the wage earner. The named plaintiffs Junius Gary and Jeanette Gary are examples of eligibles to whom this purpose has no logical application. Even when eligibility for AFDC is predicated upon continued absence from the home, dependent children and families with dependent children may still receive payments in excess of the maximum grant, if those children in number in excess of the cut-off point are placed with other relatives, a child-care institution, a child-placement or a child-care agency. A parent

[12] On the evidence before us the conclusion is equally tenable that the maximum grant regulation was adopted to make the entire AFDC program more palatable politically. Perhaps those purposes were inspired, however, by unarticulated notions of the "principle of less benefit."

who is willing to desert to give his children or his family eligibility for AFDC on this basis can hardly be presumed to voice stringent objection to further breakup of the family unit to gain advantage from this unusual aspect of the Maryland regulation. Thus, the maximum grant regulation not only subverts the statutory goal of preserving intact the family unit, but it is also ineffective to discourage eligibility by continued absence from the home.

The same is true with regard to the claimed purpose of inducing a surviving parent to seek employment, namely, that it is inapplicable to inability to work or lack of employment and is ineffective to achieve its purpose even in the subcategory to which it might be efficacious. Other considerations also come into play. The basic purpose of AFDC is to aid needy *children*, and to achieve this schedules of need based upon the cost-of-living have been established by the state. The principle of "less benefit" can have no application to those under the age when the state will permit them to work.[13] The evidence indicates that only a relatively small percenage of families (166 out of 2,537, or 6.5%) receiving AFDC payments are classified as having employable numbers. To what percentage of the 6.5% of total AFDC beneficiaries the maximum grant regulation is applicable is not disclosed. The evidence does show that the plaintiffs Junius Gary and Jeanette Gary, his wife, are receiving AFDC payments because of sickness and disability, and neither they nor the named plaintiff Linda Williams are employable. It is simply irrelevant to apply the "less benefit" principle of encouraging employment to individuals who could not, in any event, be gainfully employed.

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[13] Like every enlightened jurisdiction, Maryland regulates the employment of minors. Those under 14 are prohibited from engaging in any gainful employment. Those over 14 but under 16 may not be employed during school hours, with certain exceptions, or in certain occupations. All minors under 18 are prohibited from engaging in certain occupations and females over 16 but under 18 from engaging in certain occupations permissible for males. See, generally, 8B Ann. Code of Md., Art. 100, §§ 4, *et seq.*

These ages should be compared to the age limitations to qualify one as a "dependent child," i.e., under the age of 18, or, in the case of a student, under the age of 21. 42 U.S.C.A. § 606.

The state may have a legitimate interest in reducing its welfare rolls by encouraging those capable of so doing to seek and maintain gainful employment, but this goal can be furthered by such devices as work incentive programs, which are aimed precisely at aiding and encouraging those who are in fact employable,[14] or by limiting the application of the regulation to those to whom it may be said to have some logical relation.

Defendants' contention that the maximum grant regulation was also initially promulgated to encourage parents to limit the sizes of their families is diffidently pressed. This asserted purpose merits little discussion. If, indeed, this is a purpose, the regulation, again, invalidly overreaches. It is not limited to children born after AFDC eligibility is established and, from the evidence, it appears that in the case of the named plaintiffs at bar no children

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[14] We call attention to the provisions of § 407 of the Act, 42 U.S.C.A. § 607, which, beginning in 1961, expanded the definition of "dependent child" to include needy children deprived of parental support or care by reason of the unemployment of a parent. This section requires as part of the state's AFDC plan, in addition to the other conditions of §402 of the Act, that the state provide such assurances as will satisfy HEW that fathers of dependent children will be referred to the Secretary of Labor for participation under a work incentive program, and for providing vocational education to encourage the retraining of individuals capable of being retrained. Moreover, the state is permitted to deny AFDC to any child or eligible relative "if, and for so long as, such child's father is not currently registered with the public employment offices in the state * * *." § 407(b)(2)(C)(i).

It is significant that the 1968 Amendments in expanding the work incentive program also limited its application to "unemployed fathers" rather than "unemployed parents." The legislative history of the 1968 Amendments makes clear that the new work incentive program which they established was not intended to apply to "a mother who is in fact caring for one or more children of preschool age, if such mother's presence in the home is necessary and in the best interest of the children." Senate Report No. 744, 90th Cong., 1st Sess., 2 U. S. Code Cong. Ser. 2859, 2984 (1967). Plaintiff, Linda Williams is literally within that category. Thus, there is legislative recognition that the principle of less benefit was not intended to apply to her and others similarly situated.

have been born after the circumstances to produce AFDC eligibility occurred.[15]

Thus, in the case of the named plaintiffs at bar, it appears that the claimed purposes of the maximum grant regulation are either totally inapplicable or patently ineffective to accomplish their objectives, and consideration of the several bases of eligibility for AFDC within the group on whose behalf the named plaintiffs sue, indicates that the same is true of other categories, the substantiality of which is not disclosed. Because it cuts too broad a swath on an indiscriminate basis as applied to the entire group of AFDC eligibles to which it purports to apply, the maximum grant regulation cannot be sustained under the equal protection clause of the Fourteenth Amendment to the Constitution of the United States.

III.

We modify our previous opinion to the extent that we do not decide whether Maryland's maximum grant regulation conflicts with the Act, as amended. On the constitutional basis of our prior decision, however, we find no reason to reach a result different from that previously announced. We reiterate our previous conclusion that Maryland's maximum grant regulation transgresses the equal protection clause of the Fourteenth Amendment to the Constitution of the United States.

The Clerk is directed to enter a short order on the docket, granting in part, and denying in part, defendants' motion, as set forth in this opinion. In accordance with our previous instructions, plaintiffs have submitted a proposed form of decree. Defendants shall present their com-

[15] The objective of family planning is part of the Act and treated with greater specificity and logic therein. By the 1968 Amendments, § 402 of the Act, 42 U.S.C.A. § 602, now requires, as part of the state's AFDC plan, that the state develop a program to achieve the objective of "preventing or reducing the incidence of births out of wedlock and otherwise strengthening family life," and for implementing this program by assuring that "in all appropriate cases family planning services are offered to them [applicants for AFDC] * * *." § 402(a)(15) of the Act, 42 U.S.C.A. § 602(a)(15).

ments thereon, and, if they be so advised, their suggested form of decree, within five days.

/s/ HARRISON L. WINTER,
United States Circuit Judge.

/s/ ROSZEL C. THOMSEN,
Chief Judge,
United States District Court
for the District of Maryland.

/s/ ALEXANDER HARVEY, II,
United States District Judge.

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ORDER

In accordance with the opinions of the United States District Court for the District of Maryland dated December 13, 1968, and February 25, 1969, and the Court being of the view that from the facts and for the reasons stated therein plaintiffs are suffering and will suffer irreparable injury unless defendants are permanently restrained from enforcing the maximum grant regulations described therein.

It is hereby ORDERED, by the United States District Court for the District of Maryland, this 18th day of March, 1969, that the defendants be and they are hereby permanently enjoined from enforcing the maximum grant regulation applicable to all AFDC recipients generally set forth in the Maryland Manual of the Department of Social Services, Part II, Rule 200, Section VII, 1, against the plaintiffs named in this action and the class represented; provided that the effectiveness of this Order is stayed for a period of forty-five days.

/s/ HARRISON L. WINTER,
United States Circuit Judge.

/s/ ROSZEL C. THOMSEN,
Chief Judge,
United States District Court.

/s/ ALEXANDER HARVEY, II,
United States District Judge.

# Supreme Court of the United States

*No.* 131 ---, *October Term, 19* 69

Edmund P. Dandridge, Jr., Chairman of the Maryland State Board of Public Welfare, et al.,

Appellants,

v.

Linda Williams et al.

UPON CONSIDERATION of the motion of the appellees for leave to proceed in forma pauperis,

IT IS ORDERED by this Court that the said motion be, and the same is hereby, granted.

October 13, 1969

# Supreme Court of the United States

*No.* 131 --- , *October Term, 19* 69

Edmund P. Dandridge, Jr., Chairman of the Maryland State Board of Public Welfare, et al.,

Appellants,

v.

Linda Williams et al.

APPEAL from the United States District Court for the District of Maryland.

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted and the case is placed on the summary calendar. This case is set for oral argument with No. 540 in which certiorari was granted today.

October 13, 1969

# Supreme Court of the United States

*No.* 131 ---- , *October Term, 19* 69

Edmund P. Dandridge, Jr., Chairman of the Maryland State Board of Public Welfare, et al.,

Appellants,

v.

Linda Williams, et al.

APPEAL from the United States District Court for the District of Maryland.

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted and the case is placed on the summary calendar.

October 13, 1969

as amended by order of October 20, 1969

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FILED
MAY 19 1969
JOHN F. DAVIS, CLERK

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1968

No. [redacted] /31

EDMUND P. DANDRIDGE, JR., CHAIRMAN OF THE MARYLAND STATE BOARD OF PUBLIC WELFARE, ET AL.,

*Appellants,*

CASE NOT PRINTED

v.

LINDA WILLIAMS, ET AL.,

*Appellees.*

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND

## JURISDICTIONAL STATEMENT

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May 16, 1969.

The Daily Record Co., Baltimore, Md. 21203

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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1968

No. ------

EDMUND P. DANDRIDGE, JR., CHAIRMAN OF THE MARYLAND STATE BOARD OF PUBLIC WELFARE, ET AL.,

*Appellants,*

v.

LINDA WILLIAMS, ET AL.,

*Appellees.*

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND

## JURISDICTIONAL STATEMENT

### OPINIONS BELOW

The initial opinion of the United States District Court for the District of Maryland is reprinted at App. 1a; the supplemental opinion of the District Court, after reargument, is reprinted at App. 13a. Copies of the original and supplemental opinions and the final decree are attached hereto as Appendix "A"; the opinions are not as yet officially reported.

### JURISDICTION

This suit was brought under 28 U.S.C.A. §1343(3) and 42 U.S.C.A. §1983, to enjoin enforcement of the Maryland

maximum grant regulation applicable to AFDC recipients, to declare its invalidity, and to require the State to make payments equal to "minimum subsistence and shelter needs as established by the Maryland State Board of Public Welfare". The final decree of the District Court was entered on March 18, 1969 and notice of appeal was filed in that Court on March 20, 1969. The jurisdiction of the Supreme Court to review this decision by direct appeal is conferred by 28 U.S.C.A. §1253. The following decisions sustain the jurisdiction of the Supreme Court to review the judgment on direct appeal in this case: *King v. Smith*, 392 U.S. 309; *Alabama Pub. Serv. Comm. v. Southern R. Co.*, 341 U.S. 341, 343-44 n. 3.

## QUESTIONS PRESENTED

1. Is a state economic regulation, conceded by the District Court to be proper as applied to some situations, subject to invalidation *in toto* for "overbreadth", notwithstanding the absence of any First Amendment or similar question requiring the validity of the regulation to be judged on its face?

2. Did the District Court apply the proper standard of review in invalidating, following explicit inquiry into legislative motive, a broad state regulation supportable on the basis of, and founded on, the economic principle of "less benefit"?

3. Did the District Court err in founding a judgment of invalidity upon assumptions as to the effect of the maxium grant regulation entirely unsupported by the record before it relating to these matters of "constitutional fact"?

4. Did the District Court err in finding no rational basis for the regulation, notwithstanding the reasonableness of the regulation as a means of:

a) providing work incentives and reinforcing other State efforts to induce seeking of, and to discourage abandonment of, gainful employment and vocational rehabilitation;

b) avoiding the encouragement of desertion by heads of families and consequent growth in the "absent parent" segment of the AFDC program, the largest and fastest growing segment of the program and the focus of federal and state legislative concern;

c) insuring that families dependent on public welfare are not afforded an economic insulation from the costs of child-bearing which is not provided to families more economically able to support children;

d) maintaining public confidence in and support for the fairness of the welfare program on the part of employed wage-earning groups earning modest incomes;

e) implementing the State's interest in allocating limited funds so as to fully meet the needs of the largest possible number of families?

## STATUTES INVOLVED

The challenged regulation, Rule 200, §X,B of the Maryland Department of Social Services (formerly Rule 200, VII, 1), reads as follows:

"B. *Amount*—The amount of the grant is the resulting amount of need when resources are deducted from requirements as set forth in this Rule, subject to a maximum on each grant from each category:

1. $250—for local departments under any 'Plan A' of Shelter Schedule
2. $240—for local departments under any 'Plan B' of Shelter Schedule

*Except that:*

a. If the requirements of a child over 18 are included to enable him to complete high school

or training for employment (III-C-3), the grant may exceed the maximum by the amount of such child's needs.

b. If the resource of support is paid as a refund (VI-B-6), the grant may exceed the maximum by an amount of such refund. This makes consistent the principle that the amount from public assistance funds does not exceed the maximum.

c. The maximum may be exceeded by the amount of an emergency grant for items not included in a regular monthly grant. (VIII)

3. A grant is subject to any limitation established because of insufficient funds."

A number of federal statutes have expressly recognized the validity of state maximum grant regulations. These include Public Law 90-248, §213(b), 42 U.S.C.A. §602(a)(23), enacted in 1967, requiring the upward adjustment of state maximums to reflect cost-of-living increases; Public Law 87-543, §108(a), enacted in 1962, permitting states with maximum family grant requirements which did not otherwise limit payments to less than state-determined need, to utilize protective payments to third persons, a privilege subsequently made available to states not meeting need requirements by the 1967 amendments; and Public Law 90-248, §220, 42 U.S.C.A. §1396(b)(f)(1)(B)(ii), providing for disregard of state maximum grant regulations, at the discretion of the Secretary of Health, Education and Welfare, in computing income limitations on eligibility for federally aided medical assistance programs.

In addition, certain regulations of the Department of Health, Education and Welfare likewise recognize the validity of state maximum grant regulations. These include 45 CFR §233.20 (a)(2)(ii and iii), 34 Fed. Reg. 1394 (1969), preceded by the Interim Policy on Need Require-

ments issued May 31, 1968. The federal statutes and regulations are set forth in Appendix "B" hereto.

## STATEMENT

The present case involves a Maryland regulation, present in differing forms in 26 other states, which establishes (subject to certain exceptions) a ceiling of approximately $250.00 per month on welfare grants under the AFDC program.

The AFDC program finds its antecedents in the Mothers' Pension Laws adopted by various states. These, in turn, derived from the discussions of the White House Conference on Children and Youth of 1909. Prior to 1909, the dominant form of public assistance in the United States, in respect to both the aged and dependent children, was "indoor" (almshouse and orphanage), as distinct from "outdoor" (money payment) relief. The references in legislative history to "aid to dependent children in their own homes" must be viewed against this background. The dominant philosophy of public assistance in the United States, until the early years of this century, was that of the British Poor Law Commission of 1835 in its almost undiluted form, with its fear of a cycle of dependency and its view that the situation of the ablebodied:

> "Shall not be made really or apparently so eligible [desirable] as the situation of the independent laborer of the lowest class * * * It is shown that in proportion as the condition of any pauper class is elevated above the condition of the independent laborers, the condition of the independent class is deprived; and industry is impaired, and employment becomes unsteady, and its remuneration in wages is diminished. Such persons, therefore, are under the strongest inducements to quit the less eligible class of laborers and enter the more eligible class of paupers."

See Webb and Webb, *English Poor Law History*, Part II, Volume 1, pages 58, 61-2; Coll, *Perspectives in Public Welfare; The English Heritage; Welfare in Review*, March 1966, Volume 4, No. 3, page 1; Abbott, *From Relief to Social Security* (1941) 262-72.

Following the White House Conference of 1909, a number of states undertook to institute programs of Mothers' Pensions, usually confined to families where the absence of the father was due to his death. By 1922, forty-three states had made some statutory provision for aid to children in their own homes; of these 35 established monthly allowance figures by statute. In spite of the fact that grants per child were on the order of $5.00 to $20.00 per month, ten states, at that early date, saw fit to impose family maximums — ranging from $25.00 in West Virginia to $60.00 in Oregon.[1] See Eckman, *Public Aid to Children in Their Own Homes*, (U. S. Dept. of Labor, Children's Bureau, Legal Chart No. 3, 1923). In Maryland, a $40.00 maximum was imposed by Chapter 670 of the Acts of 1916, which remained part of Maryland law until enactment of Chapter 401 of the Acts of 1929, which relegated need standards to determination by county boards. By 1934, 46 states had mothers' pension programs; the majority of them imposed family maximums. See Abbott, *supra* at 276-77. In 1934, the Report of the [federal] Committee on Economic Security, adopting a recommendation of the Children's Bureau, recommended a federal ADC program. Cohen, *Factors Influencing the Content of Federal Public Welfare Legislation*, 1954 Social Welfare Forum 199, 205, 209 (1954). "[T]here was very little interest in Congress in ADC . . . The fact that the committees of Congress limited the original Federal share to one third, placed relatively

[1] These states included Kansas, Louisiana, Maryland, Missouri, Montana, Nebraska, Nevada, Oregon, Utah, and West Virginia.

low limitations on the amount of Federal aid per child and omitted any federal sharing for the mother or adult caretaker reflected the degree of the prevailing interest in the program." The bill drafted by the Committee on Economic Security provided for a closed-end appropriation. It "recognized that there would be waiting lists in that it provided that a state would have to file an annual statement of the number of children on the waiting list to receive assistance. The bill did not define what 'assistance to children' meant." Cohen, *supra*, at 205. Congress eliminated the closed-end appropriation, but otherwise engrafted further limitations on the Committee on Economic Security bill. Thus, the federal share of matching was, at the suggestion of Congressman (later Chief Justice) Vinson, limited to $18.00 a month for the first child, and $12.00 for each additional child, regardless of actual or state-determined need. "These figures were obtained by review of the Federal pensions provided for widows and children under veterans legislation of which the Ways and Means Committee at that time had jurisdiction. But whereas the veterans schedule then provided $30.00 for two children where there was no widow and increased the amount to $46.00 where there was a widow, the committee did not include any payment for the mother under ADC. It was not until 1950 — fifteen years later — that this defect was corrected." Cohen, *supra*, at 205. Further "[t]he 'decency and health' plan requirement was deleted from the legislation, primarily due to the criticism from members of both the House and Senate Committees that this would give the Federal authority the right to set standards relating to amount of assistance." Cohen, *supra*, at 206. These limitations were recognized by this Court in *King v. Smith*, 392 U.S. 309, 334, referring to the states' "undisputed power to set the level of benefits *and* the standard of need." (Emphasis supplied).

In Maryland, establishment of benefit levels following implementation of AFDC by Chapter 148 of the Acts of 1936 was confided to county boards, some, at least, of which imposed maximum grant requirements. The Minutes of the State Board of Public Welfare of February 2, 1945 (included in the record as part of Item 23, Exhibit E), reveal that in 1945 the State Board of Public Welfare adopted a resolution seeking to limit restrictive policies of county boards. Prior to this time, State ADC grants were limited to the federal maximum grant with some local supplementation from general assistance funds. Subsequently, commencing on July 1, 1947, in consequence of requirements imposed by federal regulations, the State imposed statewide needs standards, including a maximum grant regulation providing for a maximum grant of $170.00 per month for families of eleven or more persons.[2] Subsequently, protests were received from local boards. "Several of the local governments were finding it difficult to accept the principle of State standardization and grants, even with adjustment of those standards for different areas of the State . . . in some areas of the State the maximum grant allowable . . . was deemed by the local authorities to be excessive for the recipient's normal pattern of living. A part of this problem [was] to keep the public assistance grant from exceeding the earnings available to a comparable family which is self-supporting . . . The belief is widespread among county boards, and there is some evidence tending to confirm it, that meagerness of grant is serving successfully as an incentive for recipients' regaining self-support." (*Report on the Department of Public Welfare,* (Maryland) Commission on Governmental Efficiency and Economy (1948)). In consequence of these

[2] The regulation, which appears in the record as part of item 23, Exhibit A, provided for a maximum grant of $100.00 for four persons.

objections, the counties were classified into four groups beginning on July 1, 1948, with allowable maxima for families of eleven (11) or more ranging from $159.00 to $170.00 in the various county groups. Beginning on October 1, 1948, the maximum grant prescribed was for families of ten persons or more and ranged from $165.00 to $176.00 in the various counties. On February 21, 1950, the maximum grants for families of ten or more were reduced to amounts ranging from $147.00 to $159.00. On January 31, 1952 flat maximum grants applicable to families of all sizes were initiated, the allowable sums ranging from $145.00 to $165.00 depending on the county. Beginning in September 1952 a uniform state maximum applicable to families of all sizes of $175.00 (subsequently increased to $180.00) was imposed. In 1956 and again in 1958 the regulation underwent intensive administrative review, data being collected on the costs of eliminating the regulation and on average weekly wages for state-insured employment, for production workers in manufacturing industry, and for farm labor, on average disposable income after taxes, and on the attitudes of county boards (Item 23, Exhibit E). On October 1, 1958 local variations based on differing shelter costs were again authorized, the authorized grants ranging from $190.00 to $210.00 depending on the county. This limit was adopted after objections by some county boards to elimination of a maximum. In a communication (included in Item 23, Appendix E) to county boards dated June 27, 1958, the Director of the State Department of Public Welfare noted that "(S)ince 1952 we have had one overall maximum on an assistance grant, thinking that an assistance grant should not go higher than the lower wages in the community." See also the affidavit of the former Supervisor of Plans and Standards of the State Department of Public Welfare (Item 23,

Exhibit I), and her memorandum of March 21, 1958 on the history of the regulation (Item 23, Exhibit A). These figures were progressively increased to the $240.00-$250.00 limits now under attack.

While the State Department of Public Welfare unsuccessfully sought elimination of the maximum grant regulation in its budget requests beginning in 1967, such requests were not transmitted to the Legislature in the Governor's budget (see Maryland Const., Art. III, Sec. 52) and at least one legislative committee expressed concern that even the existing maximum grant level operated as a disincentive to employment and as an incentive to desertion by wage earners. Maryland Legislative Council, *Report to the General Assembly of 1967*, at 478 (*Report of the Legislative Council Committee on Public Welfare Cost*, October 1966). (Item 23, Exhibit F)

Each and all of the approximately 20 versions of the maximum grant regulation were submitted to, and accepted for incorporation in the State Plan by the Department of Health, Education and Welfare. (Stipulation, Item 27 and see Item 23, Exhibit H). Each such acceptance constituted a finding by the federal authorities that the state maximum grant regulation plan was in accord with the requirements of the Social Security Act, including 42 U.S.C.A., §602 (a) (g). See 42 U.S.C.A., §602(b); Department of Health, Education and Welfare, *Handbook of Public Assistance Administration*, Part VII, Section 1100, pp. 1-15, 57-63; cf. *King v. Smith*, 392 U.S. 309, 317, 326, 337 and nn. 11 and 23 on the significance of acceptance of incorporation of regulations. The Department of Health, Education and Welfare, beginning in 1961 and continuing annually to date, issued an annual informational release entitled *State Maximums and Other Methods of Limiting Money Payments to Recipients* listing maximum grant

regulations in some twenty-seven states. See also Sparer, *Social Welfare Law Testing*, 12 Prac. Law. 13, 21 (1966). These compilations indicate that the Maryland maximum is one of the highest state maximums and bears a clear relationship to the minimum wage rate;[3] the other family maximums ranging downward to the $81.00 maximum applicable until recently in Florida.

The present action was instituted on February 28, 1968. The District Court denied the State's motion to dismiss by order dated June 25, 1968 (Item 20). The complaint asserted the invalidity of the regulation under Article 88A, Sections 44A and 49 of the Maryland Code as well as under the Federal Constitution and Social Security Act. Notwithstanding this fact, the District Court denied the State's Motion to Dismiss on the basis of the doctrine of equitable abstention.[4] Clearly, a decision that the unconstrued Maryland statutes barred the regulation would have avoided the grave constitutional question, rendering abstention appropriate in favor of state judicial remedies under the doctrine of *Harrison v. N.A.A.C.P.*, 360 U.S. 127 and *Zwickler v. Koota*, 389 U.S. 241. Abstention was nevertheless denied, notwithstanding the inapplicability of *Damico v. California*, 389 U.S. 416, which related only to abstention in favor of state *administrative*, remedies. See *Boone v. Wyman*, 295 F. Supp. 1143, 1151, (S.D.N.Y. 1969).

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[3] As at February 25, 1969, the date of the supplemental opinion of the court below, the weekly minimum wage (based on a 40 hour week) was $52-64 under the federal law (29 U.S.C.A. §206) and $46-52 under the state law (Md. Code Ann. Art. 100, §83). At the date of the court's initial opinion, the federal minimum wage was $46-64 and the state minimum wage $46. Welfare payments are of course tax-free. See 1938-2 Cum. Bull. 136; 1957-1 Cum. Bull. 26; Md. Code Ann. Art. 81, §280. In addition, recipients are generally eligible for medical assistance and other forms of assistance in kind, such as the food stamps received by the plaintiff Williams (Stipulation, Item 19).

[4] The doctrine of abstention is properly raised by a Motion to Dismiss. *Government & Civic Employees Organizing Committee v. Windsor*, 353 U.S. 364; *Shipman v. Du Pre*, 339 U.S. 321, compare *Steinbach v. Mo Hock Ke Lok Po*, 336 U.S. 368.

On December 13, 1968, the District Court rendered its initial decision invalidating the regulation under both the Equal Protection Clause and Section 402 (a) (9) of the Social Security Act. On December 23, 1968, the Defendants filed a motion for reargument, etc., under Fed. R. Civ. P. 52 and 59; on February 25, 1969 a supplemental opinion was filed in which the District Court retracted its finding of invalidity under the Social Security Act and found the regulation void under the Equal Protection Clause only for "overbreadth" (Supplemental Opinion, Item 30, App. 28a-31a). In retracting with some reluctance its finding of invalidity under the Social Security Act, the court relied upon the implied recognition of maximum grant regulations in Section 402 (a) (23) of the Social Security Act (42 U.S.C.A. §602 (a) (23), added by Section 213 (b) of Public Law 90-248. The District Court referred to this amendment as "inexplicable". (Supplemental Opinion, App. 21a). But apart from the fact that, as already noted, Congress had on several previous occasions expressly recognized state maximum grant regulations (see e.g. Cohen and Ball, *The Public Welfare Amendments of 1962*, 20 Public Welfare 191, at 229-30 (1962), Item 29), and apart from the fact that 42 U.S.C.A. §602 (a) (23) on which the court originally relied for a conclusion of invalidity had the very limited purpose of eliminating state waiting lists,[5] it is clear that §602 (a) (23) is not an "inexplicable" sport in the law. Section 602 (a) (23) resulted from an effort on the part of the then administration to secure enactment of a provision which *would* have invalidated state maximum grant regulations, as well as fraction-of-need regulations,

[5] See Cohen, *Factors Influencing the Content of Federal Public Welfare Legislation*, 1954 Social Welfare Forum 199, 205, 209, Item 31, and see 1950 U.S. Cong. & Adm. News, 3470-71, 3507 (House Committee report on §602 (a) (9)) and 95 Congressional Record 13934 (1949) (Remarks of Representative Forand).

by requiring all states to fully meet state-determined need and to adjust payments upward to reflect increases in the cost of living. See *President's Proposals for Revision in the Social Security System*, Hearings before the Committee on Ways and Means, House of Representatives, 90th Congress, 1st Session, part 1, pages 6, 59-60 (1967); Committee on Ways and Means, *Section-by-Section Analysis * * * of H.R. 5710 * * * prepared and furnished by the Department of Health, Education and Welfare*, 116 (1967). Rather than adopting this proposal, Congress confined itself to accepting that portion of it relating to cost-of-living increases in existing maximum grant levels and declined to require the states to otherwise fully meet state-determined need. It is hard to see how Congress could have said more clearly that it regarded maximum grant regulations as permissible under the Social Security Act. By reason of the District Court's failure to abstain and the clear validity of the regulation under the Social Security Act, this Court is now squarely confronted with the issues under the Equal Protection Clause.

## THE QUESTIONS ARE SUBSTANTIAL

1. As previously noted, more than twenty states have maximum grant regulations similar to the Maryland regulation. Until the decision in the instant case, the validity of such regulations under the federal constitution and statutes had been generally assumed.[6] Since the decision, federal courts in Arizona (*Dews v. Henry*, No. 6417 and *Inclan v. Graham*, No. 2548 D. Arizona, decided March 13,

[6] The 4-3 decision of the Supreme Court of Iowa in *Collins v. State Board of Social Welfare*, 248 Iowa 369, 81 N.W. 2d 4 (1957) invalidating a regulation under the equal protection clause of the Iowa constitution does not supply authority to the contrary. The standards applied by the Iowa court in reviewing state economic legislation are for more stringent than those applied by this court. See e.g., *Bulova Watch Co. v. Robinson Wholesale Co.*, 252 Iowa 740, 108 N.W. 2d 365 (1961).

1969) and Maine (*Westberry v. Fisher*, No. 10-80, D. Me., decided March 21, 1969) have invalidated state maximum grant regulations in reliance on the present case. In those cases, unlike this one, the sole ground urged in support of the regulations by the State Attorneys General was their character as fund-saving measures. Litigation attacking state maximum grant regulations is pending in California, the District of Columbia, Georgia, Louisiana, Mississippi, Texas, Washington, and West Virginia, among other jurisdictions. The estimated cost to the State of Maryland of removal of the maximum grant regulation (assuming no proportionate reduction of other grants such as that carried out in Florida, see 16 Welfare Law Bulletin 4 (1969)) is on the order of $1,440,000 per year (Affidavit in Support of Application for Stay). Even larger amounts are involved in other states, and the sums involved will be drawn almost entirely from state funds, since the existing federal matching grants are already paid with respect to each child in the family regardless of state limitations on aid to large families. (See 42 U.S.C.A. §603; Item 37, pp. 17-19 (Testimony of Thomas Schmidt)). In the event an appropriation by the legislature is not forthcoming or surplus funds are not available from the present welfare budget, implementation of the decision of the court below would require a uniform reduction in welfare payments to the entire class of welfare recipients generally, some 140,000 persons, including the aged, blind, disabled, etc., (exclusive of foster care recipients) in an amount approximating 4% of each grant (Affidavit in Support of Application for Stay).

2. The court below, while recognizing the rationality of maximum grant regulations affecting employable persons (Supplemental Opinion, App. 30a), found the regulation in its entirety invalid for "overreaching". It thus gave the

named plaintiffs, whose situation was highly exceptional,[7] standing to attack the regulation "on its face". The court below also seriously misstated the proportion of AFDC recipients who were potentially employable, equating employability with the AFDC-U category. (Supplemental Opinion, App. 29a). The court below cited the Senate Report (No. 744, 90th Congress, 1st Session) on the 1967 work incentive amendment as embodying a congressional judgment that mothers of pre-school children, and mothers generally, were not eligible for referral under work incentive programs (App. 30a, n. 14). But the Senate's judgment was rejected in conference and in the final bill. "The conference agreement contains the provisions of the Senate amendment, with amendments * * * (3) eliminating mothers and other relatives who care for pre-school children or children under 16 attending school from the specified classes of persons for whom referral under the program is declared to be inappropriate." Conference Report No. 1030, 90th Congress, 1st Session, 2 U.S. Code Cong. & Adm. News 3204 (1967). See Carter, *The Employment Potential of AFDC Mothers*, 6 Welfare in Review #4, 1, 8-9 (1968). Decisions of this court make clear that state economic legislation, unlike legislation involving first amendment rights, is not subject to attack "on its face". See *Shelton v. Tucker*, 364 U.S. 479, 488 n. 8 and authorities there cited, and cf. *Louisiana v. N.A.A.C.P.*, 366 U.S. 293, 296-97; *N.A.A.C.P. v. Alabama*, 377 U.S. 288, 307-08 on the First Amendment basis of the "void for overbreadth" rule. It is plain that the maximum grant regulation cannot be deemed invalid even as applied to the named plaintiffs. See *Purity Extract Co. v. Lynch*, 226 U.S. 192, 204; *Queenside Hills Realty Co. v. Saxl*, 328 U.S. 80, 83.

[7] The Williams parents were a disabled mother and an absent father; the Gary parents were both disabled. The typical AFDC situations — an able-bodied mother and absent or disabled father, were conspicuously unrepresented.

3. The court below referred repeatedly to the supposed effects of the maximum grant regulation, which was said to be "uniformly applied * * * to encourage the disbanding of large families" (Supplemental Opinion, App. 26a), to have "pernicious results" (Supplemental Opinion, App. 26a), and to "subvert the statutory goal of preserving intact the family unit" (Supplemental Opinion, App. 29a). Similar charges might of course be levelled at the state practices authorized by 42 U.S.C.A. §604 (b). But both the record and the published social science literature appear utterly bare of evidence that maximum grant regulations have in fact resulted in family disintegration in consequence of the banishing of children of large families from the home in order that they may secure added benefits in foster homes or the homes of other relatives. Rather it is a fair inference that in the vast majority, if not all, cases the children of large families remain in the home, supported, perhaps, less adequately then they otherwise might be, but in the home nonetheless. The court's finding of factual subversion of family relationships on the basis of a syllogism drawn from the statutory framework is reminiscent of the judicial techniques used in invalidation of much early social legislation. See Comment, *The Presentation of Facts Underlying the Constitutionality of Statutes*, 49 Harv. L. Rev. 631, 637-39 (1936), and see Laski, *Judicial Review of Social Policy in England*, 39 Harv. L. Rev. 832, 842 ff. (1926). While the published literature contains no evidence that exiling of children and consequent family disintegration is an effect of maximum grant regulations, there is a substantial body of literature and contemporary discussion dealing with the phenomenon of "welfare desertion"[8]

[8] The District Court's treatment of the welfare desertion problem is found at App. 28a and 29a: "A parent who is willing to desert to give his children or his family eligibility for AFDC on this basis can hardly be presumed to voice stringent objection to

which points to a precisely opposite conclusion — that in jurisdictions with high benefit levels not imposing maximums, the availability of AFDC to broken but not intact families has operated as an inducement to employed fathers to desert their families in order to render them eligible for benefits in excess of the wage rate. See, e.g. Burns, *Social Security and Public Policy* (1956), at 86; New York Times, February 24, 1969, 40:4; March 20, 1969, 48:1; March 21, 1969, 44:2. Indeed, it is well known that the "absent-parent" category makes up the lion's share of AFDC cases; and is the fastest growing AFDC category. In appraising the effects of welfare regulations on family solidarity, the state was surely entitled to address itself to the most pressing evil. Cf. *Williamson v. Lee Optical Co.*, 348 U.S. 483, 489; *McDonald v. Bd. of Election Commrs.*, 37 L.W. 4379, 4381 (Apr. 28, 1969).

4. The state was also entitled, in the interest of providing work incentives and avoiding the provision of disincentives, to enforce a maximum grant requirement related to the minimum wage rate. It is clear that maximum grant regulations do provide an incentive to employment not present in states not imposing maximums by allowing recipients to retain earnings in excess of the grant, and that the effect of such regulations is to decrease tenure on the welfare rolls. See Schorr, *Explorations in Social Policy* (1968) at 29, comparing the experience in maximum-grant and non-maximum grant states, and Carter, *The Employment Potential of AFDC Mothers*, 6 Welfare in

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further breakup of the family unit to gain advantage from this unusual aspect of the maximum grant regulation. Thus, the maximum grant regulation not only subverts the statutory goal of preserving intact the family unit, but it is also ineffective to discourage eligibility by continued absence from the home." This would not seem in fact or logic a sufficient answer to the state's position that removal of the maximum grant would operate as an incentive to desertion.

Review #4, 1, 8-9 (1968) which suggests that experience under maximum grant regulations provided part of the inspiration for the 1967 work incentive amendments to the Social Security Act. See also Burns, *Social Security and Public Policy* (1956), pp. 57, 62 (referring to young workers, casual and intermittent workers, and women as groups most prone to abuse of generous unemployment and disability insurance systems), and Shultz, *The Dynamics of a Labor Market* (1951), ch. 6. See also Hausman, *The 100% Welfare Tax Rate: Its Incidence and Effects* (1967); Durbin, *The Labor Market for Poor People in New York City* (1968).

This court has recognized "a state purpose to encourage employment" as an "admittedly permissible" state objective in the design of welfare programs. *Shapiro v. Thompson*, 37 L.W. 4333, 4337 (Apr. 21, 1969). Under the *Shapiro* rule, since the classification here does not touch on any independent fundamental right, such as that of interstate movement, the traditional standard of whether the regulation is "without any reasonable basis" (*Shapiro v. Thompson*, 37 L.W. 4333, 4339 n. 20; *Lindsley v. National Carbonic Gas Co.*, 220 U.S. 61, 78, see also *Flemming v. Nestor*, 363 U.S. 603; *Snell v. Wyman*, 281 F. Supp. 853 (S.D. N.Y. 1968), affd. 37 L.W. 3246; is applicable. The elaborate "psychoanalysis" of the legislative body carried out by the District Court (Supplemental Opinion, App. 27a-28a, Initial Opinion, App. 11a) is inappropriate under this standard, see *United States v. Constantine*, 296 U.S. 287, 298-99 (Cardozo, J.), since "legislatures are presumed to have acted constitutionally even if source materials normally resorted to for ascertaining their grounds for action are otherwise silent, and their statutory classifications will be set aside only if no grounds can be conceived to justify them". *McDonald, supra*, 37 L.W. at 4381. The application

of a maximum grant regulation was rational to avoid disincentives to employment on the part of families with employable members (including women eligible for work incentive referral under the 1967 amendments) and was also rational in its application to families with unemployed or disabled members, for whom benefit levels under state workmen's compensation and unemployment compensation laws have traditionally been set at a fraction of earnings in order to avoid disincentives arising from imperfect administration of eligibility requirements. As already noted, the regulation is rational in relation to the "absent parent" category, the other large category remaining in AFDC after recent expansions of OASDI assistance, and it is also the most rational way of allocating limited state funds so as to fully meet the needs of the largest possible number of families. The AFDC program nationally has been criticized for encouraging desertion and for its "welfare tax" features discouraging employment by recipients; the State was entitled to consider that elimination of the maximum would exacerbate both these defects. The rationality of the regulation as a whole, and as to the overwhelming number of situations to which it was to be applied, is apparent, and the legislative authorities "(were) not bound to resort to a discrimination * * * which * * * would facilitate subterfuges and frauds and fetter the enforcement of the law. A contrary conclusion, logically pressed, would save the nominal power while preventing its effective exercise." *Purity Extract Co. v. Lynch*, 226 U.S. 192. It is to be noted that even many of the most ardent proponents of expanded social welfare benefits frequently state that the complete displacement of the indirect incentives provided by economic want will necessarily give rise to demands for more direct methods of social control in the form of detailed regulation of the conduct of beneficiaries or government conscription and compulsion of labor. See E. H. Carr,

"From Economic Whip to Welfare State", *The New Society* (1951), pp. 59-60, alluding to "the necessity of some form of sanction for a direction of labour to take the place of the discarded * * * economic whip," and compare Myrdal, *Nation and Family* (1945), 142. Maryland was entitled to act on the belief, in designing its welfare program, that some measure of *laissez faire*, with all its cruelties and anomalies, was preferable to the political and economic problems and curtailments of freedom which might follow in the train of the government direction of labor possible if the principle of less benefit was totally dispensed with in the design of welfare programs. The state was entitled to believe that the use of administrative means to encourage employment was a greater evil than the limitations imposed by the maximum grant regulation, that such means would be less effective, see Carter, *supra*, at 8-9; Schorr, *supra*, at 29, and that there was no less restrictive alternative to that regulation. Compare Comment, *Compulsory Work for Welfare Recipients under the Social Security Amendments of 1967*, 4 Colum. J. L. & Soc. Prob. 197 (1968), criticizing the administrative methods of control provided by the 1967 Social Security amendments as a form of involuntary servitude.

Moreover, the regulation is independently sustainable on at least three other grounds: (1) As a means of maintaining an equity between welfare and wage earning families[9] necessary to insure public support for welfare programs, see Steiner, *Social Insecurity: The Politics of Welfare* (1966), 131 and Moynihan, *The Crises in Welfare*, 10 *The Public Interest*, 1, 20-22 (1968) and as a product of normal processes of political compromise, as distinct from an all-or-nothing approach to public probems; (2) as a

[9] Maryland, like the federal government and unlike some states, has no state general assistance program of wage supplements. . . .

reasonable limitation on the extent to which the state will provide subsidies for child support to welfare recipients which it does not provide to the public generally, given the fact that the ordinary economic disincentives to childbearing are less operative among persons whose income, unlike that of most wage earners, increases with each new child, see Moynihan, *supra*, at 10-11,[10] and cf. the Report of the [British] Royal Commission on Population, (Cmd. 7695 (1949), Art. 452), and (3) as a less socially damaging means than across-the-board cuts of carrying out necessary economies, see Abbott, *From Relief to Social Security*, 286 (1941).

## CONCLUSION

Reduced to its essentials, this case involves the constitutionality of a state regulation founded on the principle of "less benefit", a basic tenet of economic *laissez faire*, chosen as an alternative to more generous policies of assistance which would be accompanied by greater and perhaps less effective direct social controls. The case puts to the test as clearly as any case could the continuing vitality of the principles of Justice Holmes' dissenting opinion in *Lochner v. New York*, 198 U.S. 45, 75 (1905):

> ". . . [A] Constitution is not intended to embody a particular economic theory, whether of paternalism and the organic relation of the citizen to the state or of *laissez faire*. It is made for people of fundamentally differing views . . . the 14th Amendment is perverted when it is held to prevent the natural outcome of a dominant opinion, unless it can be said that a rational and fair man necessarily would admit that the statute

[10] While invasions of privacy or the use of criminal or other drastic sanctions to discourage family growth undoubtedly runs afoul of constitutional safeguards, it is a far cry from this to say that the state may not withhold child subsidies from welfare recipients which are not made available to the public generally.

proposed would infringe fundamental principles as they have been understood by the traditions of our people and our law. It does not need research to show that no such sweeping condemnation can be passed upon the statute before us."[11]

The drastic constitutional decision of the lower court, reached in disregard of principles of equitable abstention and in disregard of the principles which have governed federal judicial review of state economic legislation for the last thirty years should be summarily reversed. *United States v. Haley*, 358 U.S. 644; *Snell v. Wyman*, 37 L.W. 3246 (January 13, 1969); *McInnis v. Ogilvie*, 37 L.W. 3354 (Mar. 24, 1969).

Respectfully submitted,

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May 16, 1969.

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[11] Compare *Schneider v. Smith*, 390 U.S. 17, 25: "The purpose of the Constitution and Bill of Rights, unlike more recent models promoting a welfare state, was to take government off the backs of people."

# APPENDIX A

## Initial Opinion

Judge:

on the pleadings, stipulations and [illegible] counsels' prayers that we declare invalid and enjoin the enforcement of the [illegible] of the Maryland Department of [illegible] summarized, provides that, irrespective of eligibility, a family receiving benefits under Families with Dependent Children Program established by the Social Security Act of 1935, 42 U.S.C.A. §§601-609, may not receive in excess per month. The declaration would be that grant" regulation is inconsistent with the Act and that it denies equal protection of jurisdiction is properly invoked under Civil U.S.C.A. §1343(3) and (4), and 42 U.S.C.A. case is an appropriate one for a three-judge under 42 U.S.C.A. §2281. *King v. Smith*, 1966).

participates in AFDC. 8A Ann. Code of Mary. §844A, *et seq.* By regulations approved by of Health, Education and Welfare, Maryland a schedule setting forth standards of need. The the monetary need for family units of vari with decreasing additional amounts for over the original recipient for with a fixed ment for each person over ten persons. Mary adopted a "maximum grant" regulation, Manual of the Department of Public Welfare, 200, §VII, 1, which provides that, irrespective figure after the maximum of a family are

ons stated in an oral opinion from the bench, we a motion to dismiss, based on various grounds, ed that to the extent that the prayers of the com- construed to require the Governor and General As- ed to appropriate additional moneys to make larger grants, such relief was barred by the Eleventh

proposed would infringe fundamental principles as they have been understood by the traditions of our people and our law. It does not need research to show that no such sweeping condemnation can be passed upon the statute before us."[11]

The drastic constitutional decision of the lower court, reached in disregard of principles of equitable abstention and in disregard of the principles which have governed federal judicial review of state economic legislation for the last thirty years should be summarily reversed. *United States v. Maley*, 353 U.S. 944; *Sneed v. Wyman*, 37 L.W. 2248 (January 13, 1969); *McInnis v. Ogilvie*, 37 L.W. 3334 (Mar. 24, 1969).

Respectfully submitted,

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May 16, 1969.

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[11] Compare *Schneider v. Smith*, 390 U.S. 17, 25: "The purpose of the Constitution and Bill of Rights, unlike more recent models promoting a welfare state, was to take government off the backs of people."

# APPENDIX A

## Initial Opinion

WINTER, Circuit Judge:

Before us now[1] on the pleadings, stipulations and testimony are plaintiffs' prayers that we declare invalid and permanently enjoin the enforcement of the "maximum grant" regulation of the Maryland Department of Public Welfare which, summarized, provides that, irrespective of the need and eligibility, a family receiving benefits under the Aid to Families with Dependent Children Program (AFDC), established by the Social Security Act of 1935, as amended, 42 U.S.C.A. §§601-609, may not receive in excess of $250.00 per month. The declaration sought is that the "maximum grant" regulation is inconsistent with the Social Security Act and that it denies equal protection of the laws. Jurisdiction is properly invoked under Civil Rights Act, 28 U.S.C.A. §1343(3) and (4), and 42 U.S.C.A. §1983, and the case is an appropriate one for a three-judge District Court under 42 U.S.C.A. §2281. *King v. Smith*, 392 U.S. 309 (1968).

Maryland participates in AFDC. 8A Ann. Code of Maryland, Art. 88A, §§44A, *et seq.* By regulations approved by the Secretary of Health, Education and Welfare, Maryland has adopted a schedule setting forth standards of need. The schedule lists the monetary need for family units of one to ten persons, with decreasing additional amounts for each person over the original recipient but with a fixed additional amount for each person over ten persons. Maryland has also adopted a "maximum grant" regulation, Maryland Manual of the Department of Public Welfare, Part II, Rule 200, §VII, 1, which provides that, irrespective of the resulting figure after the resources of a family are

[1] For the reasons stated in an oral opinion from the bench, we heretofore denied a motion to dismiss, based on various grounds. We also indicated that to the extent that the prayers of the complaint might be construed to require the Governor and General Assembly of Maryland to appropriate additional moneys to make larger payments to plaintiffs, such relief was barred by the Eleventh Amendment.

deducted from its need as prescribed in the schedule, the maximum grant permitted under AFDC in Baltimore City is $250.00 per month.[2] The maximum grant regulation is applicable only to members of a family unit who live together; it does not apply to an eligible recipient who resides in another household or a child-care institution.

Plaintiffs have sued for themselves and on behalf of the class which they represent. Plaintiff Linda Williams resides with her eight children, who range in age from four years to sixteen. Their father is continuously absent from her home and she and one of her children are in poor health. They are totally without financial resources. This condition did not arise until sometime after the birth of her youngest child. Under the standards of need, her family should receive benefits in the amount of $296.15 per month while, in fact, she is granted maximum welfare in the amount of $250.00 per month by reason of the application of the maximum grant regulation.

Plaintiffs Junius Gary and his wife live together with their eight children, who range in age from four years to eleven. Mr. Gary is totally disabled from working for medical reasons, and Mrs. Gary, who is required to remain at home to care for her children, is also in ill health. They are totally without financial resources. This condition did not arise until after the birth of their youngest child and until Mr. Gary became disabled for employment. According to the standards formulated by the Department of Public Welfare they should receive $331.50 per month for themselves and their eight children, but they are limited to a monthly grant of $250.00 by reason of the maximum grant regulation.

If Mrs. Williams were to place two of her children of twelve years or over with relatives, each child so placed would be eligible for assistance in the amount of $79.00 per month, and she and her six remaining children would still be eligible to receive the maximum grant of $250.00. If

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[2] In the case of recipients who do not reside in Baltimore City the maximum grant is $240.00 per month. All plaintiffs in the instant case are residents of Baltimore City.

Mr. and Mrs. Gary were to place two of their children between the ages of six and twelve with relatives, each child so placed would be eligible for assistance in the amount of $65.00 per month, and they and their six remaining children would still be eligible to receive the maximum grant of $250.00.

From the testimony in the case, it appears that the maximum grant regulation has its genesis and rationale in the fact that the Governor and the General Assembly of Maryland have failed to appropriate sufficient funds for Maryland's share of the cost of AFDC to satisfy the state-determined need of all persons entitled to benefit thereunder. The purpose of the maximum grant regulation is solely to to conserve state funds, by allocating state funds (less in amount than state-recognized need) among only some of the the persons entitled thereto. Because the amount of federal funds to support AFDC is computed on the basis of the need of recipients, rather than the extent to which the State satisfies that need, the maximum grant regulation has the incidental effect of increasing the federal government's share of the cost of the total program beyond what would be the amount of that share had the maximum grant regulation not been adopted.

I.

The history, the scope and the basic purposes of the AFDC program, initiated as part of the Social Security Act of 1935, are fully developed in *King v. Smith, supra*, to which reference is made for a fuller treatment. It suffices to state that while State participation in the scheme of cooperative federalism is voluntary on the part of each State, and while each State "is free to set its own standards of need," as well as "to determine the level of benefits by the amount of funds it devotes to the program" (*King v. Smith, supra*, at 318-319), those which desire to take advantage of the substantial federal funds available for distribution to needy children are required to submit an AFDC plan for the approval of the Secretary of Health,

Education and Welfare. 42 U.S.C.A. §§601-604.[3] The plan, to be valid, must conform to the requirements of the Act and applicable regulations of the Secretary.[4]

Section 402 of the Act, 42 U.S.C.A. §602, sets forth the mandatory requirements of a state plan for aid and services to needy families with children. *Inter alia*, the plan must "provide, effective July 1, 1951, that all individuals wishing to make application for aid to families with dependent children shall have the opportunity to do so, and that aid to families with dependent children shall be furnished with reasonable promptness to all eligible individuals" (emphasis supplied). The mandate is clear that, within the framework of state-determined standards of need, the State must meet those needs in regard to "all eligible individuals."

Who are "eligible individuals" is supplied by other provisions of the Act. Section 401 of the Act, 42 U.S.C.A. §601, states that the legislative purpose of appropriations under AFDC is:

> "For the purpose of encouraging the care of dependent children in their own homes or in the homes of relatives by enabling each State to furnish financial assistance and rehabilitation and other services, as far as practicable under the conditions in such State, *to needy dependent children and the parents or relatives with whom they are living* to help maintain and strengthen family life and to help such parents or relatives to attain or retain capability for the maximum self-support and personal independence consistent with the

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[3] This record does not reflect whether Maryland's "maximum grant" regulation has been given such approval. Presumably, because of its newness, it has not. But approval, while of interest, would beg the question of whether it comports with the Act and the Constitution.

[4] Congress has the unquestioned power to fix the terms upon which its allotments to states shall be disbursed. *King v. Smith, supra; Ivanhoe Irrigation District v. McCracken*, 357 U.S. 275 (1958); *Oklahoma v. United States Civil Serv. Com.*, 330 U.S. 127 (1947).

maintenance of continuing parental care and protection * * *." (emphasis supplied).[5]

"Dependent child" is defined in §406, of the Act, as amended, 42 U.S.C.A. §606(a).[6] Where there exists a "dependent child," the "aid to families with dependent children," which is the object of the legislation, is defined to include money payments or medical care to the relatives with whom the dependent child is living; and if that relatives is a parent, to the spouse of such parent, under certain circumstances. 42 U.S.C.A. §606(b).[7] The amount of such aid, under the circumstances just mentioned, is thus computed by treating the relative, parent or spouse of parent, as the case may be, of the "dependent child" as a part of the family unit.

It will be noted that the definitions contain no limitation on eligibility by reason of the fact that one, who is

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[5] As originally enacted, AFDC permitted State disqualification for benefits on the grounds of illegitimacy or state determination that a dependent child did not reside in a "suitable home." As part of legislation outlawing immorality and illegitimacy as disqualifying factors, Congress enacted 42 U.S.C.A. § 608 to permit payments to States for benefits to "dependent children" placed in foster homes and child-care institutions. See discussion *King v. Smith*, pp. 322-324.

[6] The full text of § 606(a) follows:

"§ 606. Definitions

When used in this subchapter—

(a) The term "dependent child" means a needy child (1) who has been deprived of parental support or care by reason of the death, continued absence from the home, or physical or mental incapacity of a parent, and who is living with his father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt, first cousin, nephew, or niece, in a place of residence maintained by one or more of such relatives as his or their own home, and (2) who is (A) under the age of eighteen, or (B) under the age of twenty-one and (as determined by the State in accordance with standards prescribed by the Secretary) a student regularly attending school, college, or university, its equivalent, or regularly attending a course of vocational or technical training designed to fit him for gainful employment."

[7] 42 U.S.C.A. § 608 modifies this definition, however, to permit a child to be treated as a "dependent" child when he has been placed in a foster home or a child-care institution under the conditions set forth in that section. See also, ft. 5, *supra*.

otherwise a "dependent child," resides in a household with or without one or more other siblings or other persons. Nor do the definitions or any other portion of the Act[8] vest in any state the authority to embroider upon the definition of "dependent child," so as to insert conditions and limitations beyond those imposed by Congress. For practical purposes, Maryland's maximum grant regulation means (assuming that the family lacks other financial resources) that in computing the amount of an award, any dependent child in excess of the fourth dependent child living with both parents, or any dependent child in excess of the fifth dependent living with one parent, does not count as a "dependent child." In effect, therefore, Maryland's maximum grant regulation would permit Maryland to avoid the mandate of §402 that it provide payments to "*all*" eligible individuals.[9]

Maryland's maximum grant regulation also violates part of the basic philosophy underlying AFDC. As originally enacted, §406 of the Act, 49 Stat. 629, defined a "dependent child" as one under age sixteen, in need, and living with his parents or a certain class of relatives.[10] The designated class of relatives was expanded in 1956 by 70 Stat. 850,

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[8] We discuss, *infra*, defendants' contention that the Social Security Act Amendments of 1967 constitute implied Congressional recognition of the validity of Maryland's maximum grant regulation.

[9] Of course, in the case of a "dependent child" moneys disbursed for him are paid not to him but to a responsible adult, child-care institution, child-placement or child-care agency for his benefit. See, *e.g.*, 42 U.S.C.A. § 608. Other provisions of the Act make clear, however, that a benefit so paid is treated strictly as a benefit for the child and not to the recipient. For example, 42 U.S.C.A. § 602(b) enjoins the Secretary not to approve a State plan which denies aid with respect to any child who has not met certain age or residency requirements; and 42 U.S.C.A. § 605 permits a State to provide counseling and guidance services "[W]henever the State agency has reason to believe that any payments of aid to families with dependent children made with respect to a child are not being or may not be used in the best interests of the child." That the "dependent child" is an "eligible" recipient is manifest.

[10] i.e., grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle or aunt.

855.[11] And as we have noted, in 1961 the definition of "dependent child" was amended to permit benefits to be granted to needy children in foster homes or in child-care institutions. The 1961 amendment, 75 Stat. 75, also permitted aid to children whose need arose from unemployment of their parents not attributable to physical or mental incapacity. It is clear, nevertheless, that one of the principal purposes of AFDC was to preserve intact the family unit.[12] The inclusion of relatives, other than parents, and the subsequent expansion of the class of qualifying relatives were to take care of the situations where both parents were dead or continually absent from the home and a relative was acting *in loco parentis*. Provision for aid to children whose parents were unemployed for reasons other than physical or mental incapacity was to respond to need, while provision for aid to children in foster homes or child-care institutions was, again, to meet need under a scheme which recognized that "there are some home environments that are clearly contrary to the best interest of these children." It is interesting to note that Senate Report No. 165, 87th Cong. (1st Sess.), 1961 U. S. Code Cong. and Adm. News, pp. 1716, 1721, in which the quoted statement was made, reaffirmed that "[t]he objective of the aid to dependent children program is to provide cash assistance for needy children in their own homes."[13]

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[11] This amendment added first cousins, nephews and nieces to the qualifying group.

[12] Senate Report No. 628, 74th Congress (1935) states: "Through cash grants adjusted to the *needs* of the family *it is possible to keep young children with their mother in their own home,* thus preventing the necessity of placing children in institutions. This is recognized by everyone to be the least expensive and altogether most desirable method for meeting the needs of these families that has yet been devised." (Emphasis supplied.)

House Report No. 615, 74th Congress (1935) also states: "* * * it has long been recognized in this country that the best provision that can be made for families of this description (without a potential breadwinner) is public aid with respect to dependent children *in their own homes.*" (Emphasis supplied.)

[13] It is also worthy of note that 8A Ann. Code of Md., Art. 88A, § 44A states: "It is hereby declared that the primary purpose of aid

The Maryland maximum grant regulation is in conflict with this legislative purpose, both as expressed in the Act and in its legislative history. As has been shown, the maximum grant regulation provides a powerful economic incentive to break up large families by placing "dependent children" in excess of those whose subsistence needs, when added to the subsistence needs of other members of the family, exceed the maximum grant, in the homes of persons included in the class of eligible relatives. If this is done, the pernicious effect of the maximum grant regulation is avoided, but the purpose of keeping them in their own home is defeated.

Defendants contend that the portion of the Social Security Act Amendments of 1967 which amended §403 of the Act, 42 U.S.C.A. §603, by adding a new subsection (d) thereto, is clear Congressional recognition that a State may impose a maximum grant limitation on benefits which it disburses. In general, §403 provides for payments to the State of the federal portion of the cost of AFDC and specifies how that portion is to be computed. The text of the new subsection (d) is set forth in the margin.[14]

We do not think that §403(d) of the Act has the effect which defendants claim. Section 403(d) relates only to

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given under this subtitle *is the strengthening of family life* through services and financial aid, *whereby families may be assisted to maximum self-support in homes meeting the requirements for child care* established by law in this State." Plaintiffs suggest a conflict between the regulation and this statute. Since plaintiffs do not press the point, we do not consider it.

[14] "(d) Notwithstanding any other provision of this Act, the average monthly number of dependent children under the age of 18 who have been deprived of parental support or care by reason of the continued absence from the home of a parent with respect to whom payments under this section may be made to a State for any calendar quarter after June 30, 1968, shall not exceed the number which bears the same ratio to the total population of such State under the age of 18 on the first day of the year in which such quarter falls as the average monthly number of such dependent children under the age of 18 with respect to whom payments under this section were made to such State for the calendar quarter beginning January 1, 1968, bore to the total population of such State under the age of 18 on that date."

a determination of the amount of federal matching funds. It limits federal funds to the number of certain defined individuals who fall within the definition of "dependent children" but it does not purport to affect a State's obligation to *all* of the individuals who fall within that definition if a State participates in AFDC as required by §602. The limitation on federal funds is applicable *only* (a) to dependent children under age 18 (while the definition of "dependent children" contained in §406(a) of the Act includes some children between 18 and 21), and (b) to dependent children deprived of parental support by reason of the continued absence of a parent (while the definition of "dependent child" contained in the Act also includes need arising from the death or physical or mental incapacity or unemployment of a parent. By contrast, Maryland's maximum grant regulation cuts a broad swath on a non-selective basis.

Much of the legislative history of new subsection (d) is irrelevant, but there is enough history to provide an explanation for its selective operation. House Report No. 544, 90th Con., 1st Sess., p. 110, where subsection (d) had its genesis, states that its purpose would limit federal expenditures in the absent parent subcategory of "dependent children," which is the fastest growing subcategory of need, and "should also give the States an incentive to make effective use of the constructive programs[15] which the bill would establish." The addition of subsection (d) was eliminated by the Senate but reinserted, in modified form, by the Conference Committee. In the Second Session of the 90th Congress, another effort was made in the Senate to eliminate subsection (d), but the attempt was abortive.

The statement of Representative Mills, who was Chairman of the House Ways and Means Committee, where the

[15] The 1967 Amendments, P. L. 90-248; 81 Stat. 821, *inter alia*, established a work incentive program for recipients, provided for the employment of qualified recipients in administering the program and provided means for locating parents who desert or abandon dependent children, including the furnishing of last-known addresses by the Internal Revenue Service.

AFDC freeze provision originated and who was also floor manager of the bill, is significant in explaining the purpose of the bill and *in negating the effect claim for it by defendants*. He said:

> "Finally, Mr. Chairman, the bill would add a provision to present law which would limit Federal financing for the largest AFDC category — where the parent is absent from the home — to the proportion of each State's total child population that is now receiving AFDC in this category. This provision, we believe, would give the States an additional incentive to make effective use of the constructive programs which the bill would establish. Moreover, this *limitation on Federal matching will not prevent any deserving family from receiving aid payments. The States would not be free to keep any family off the rolls to keep within this limitation* because there is a requirement in the law that requires equal treatment of recipients and uniform administration of a program within a State. . . ." 113 Cong. Rec. H. 10670 (August 17, 1967; unbound) (emphasis supplied).[16]

Because of its selective nature, because it applies only to a determination of the amount of a federal grant and because its legislative history shows that it had a special purpose other than that ascribed to it by defendants, we conclude that subsection (d) is of no aid or comfort to defendants. Thus, the basic purpose of the Act that, when a State participates in AFDC, all dependent children receive benefits thereunder according to need is unsullied, and the Maryland maximum grant regulation is manifestly in conflict. Therefore, Maryland's maximum grant regulation cannot stand.

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[16] In regard to the last part of Chairman Mills' statement, it should be noted that § 402 of the Act, 42 U.S.C.A. § 602, requires that AFDC be effective in all political subdivisions of a participating State, as well as aid be furnished with reasonable promptness to all eligible individuals.

## II.

Our view that the Maryland regulation is invalid is reinforced by our conclusion that the regulation cannot stand under the equal protection clause. It is, therefore, appropriate that we discuss the constitutional issue.

We have searched the record in vain for any state purpose to be served by the maximum grant regulation other than to fit the total needs of the State's dependent children, as measured by the State's standards of their subsistence requirements, into an inadequate State appropriation. The search was important, and the absence of another reason fatal to the defense, because, clearly, dependent children of large families receive different treatment from dependent children of small families. Discrimination of this type, not to run afoul of the equal protection clause, must be founded on reason in the light of its purpose. *McLaughlin v. Florida*, 379 U.S. 184, 189 (1964). While a State may classify persons for various purposes, it may not do so on arbitrary or irrational grounds. *Yick Wo v. Hopkins*, 118 U.S. 356 (1886); *Carrington v. Rash*, 380 U.S. 89 (1965). As most recently stated by the Supreme Court, in a case holding a wrongful death statute which denied recovery to illegitimate children while permitting recovery to lawful issue invalid under the equal protection clause:

> "While a State has broad power when it comes to making classifications * * * it may not draw a line which constitutes an invidious discrimination against a particular class. * * * Though the test has been variously stated, the end result is whether the line drawn is a rational one. * * *" *Levy v. Louisiana*, 391 U.S. 68, 71 (1968).

See also, *Glona v. American Guar. & L. Ins. Co.*, 391 U.S. 73 (1968).

That under these rules the maximum grant regulation is offensive is easily demonstrable. AFDC is a program to provide support for dependent children. By the standards of need set by Maryland, a dependent child is in as great need and as deserving of aid, whether he be the fourth or

the eighth child of a family unit, although if the latter, the amount of his need may not be quite as great as that of the former, because it is cheaper to provide clothing, food and shelter for the eighth child than for the fourth. Yet, the maximum grant regulation, in accomplishing its purpose of conservation of inadequate funds, assumes that a child, because he is the eighth (or any other number where to grant him benefits would bring the aggregate benefits to the family unit over the maximum grant) is either not in need or that his need must go unsatisfied. Reason and logic will not support such a result. The fact that such a child, if moved to the home of an eligible relative, may receive such benefits lends additional support to this conclusion. In effect, Maryland impermissibly conditions his eligibility for benefits upon the relinquishment of the parent-child relationship. *Cf., Sherbert v. Verner*, 374 U.S. 398 (1963). The result we reach is fully in accord with that of other courts which have considered the same or similar questions. *Collins v. State Board of Social Welfare*, 248 Iowa 369, 81 N.W. 2d 4 (1957); *Anderson v. Schaefer*, ..... F. S. ..... (N.D. Ga. 1968); *Metcalf v. Swank*, ..... F. S. ....., 37 L.W. 2277 (N.D. Ill. 1968) (dictum). We hold, therefore, that the maximum grant regulation transgresses the equal protection clause.

## III.

Lest our holdings be misunderstood, some additional words are required. We do not hold that Maryland must appropriate additional funds to support its participation in the program of AFDC; we reiterate our previous holding that the Eleventh Amendment deprives courts of the United States from jurisdiction to grant such relief.

We hold only that if Maryland has appropriated insufficient funds to meet the total need under AFDC, as measured by the standards for determining need that Maryland has prescribed, Maryland may not, consistent with the Social Security Act or the equal protection clause, correct the imbalance by application of the maximum grant regulation. No other proposed solution to this problem is before us, and we express no other opinion.

Within ten days counsel may agree upon and present a form of order consistent with these views.

/s/ HARRISON L. WINTER,
United States Circuit Judge.

/s/ ROSZEL C. THOMSEN,
Chief Judge,
United States District Court.

/s/ ALEXANDER HARVEY, II,
United States District Judge.

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SUPPLEMENTAL OPINION ON MOTION

WINTER, Circuit Judge:

After the filing of our opinion in this case, defendants filed a multi-faceted motion, purportedly under Rules 52(b) and 59, *Fed. R. Civ. P.*, in which they ask, alternatively, that we amend our findings of fact and judgment, grant a new trial, or receive additional evidence and alter or amend the judgment. Basically, the new or additional facts that defendants want us to consider are not in the nature of newly-discovered evidence; and no compelling excuse is offered as to why they were not previously brought to our attention.[1] Understandably, plaintiffs vigorously question defendants' right to proceed, and they cite persuasive authority in support of their position.

The case is an important one. Proof has been offered to establish that twenty-seven states have maximum grant regulations similar to that of Maryland; other litigation questioning their validity is pending in other courts. In an effort to arrive at a correct decision, we should give full and complete consideration to all relevant materials. We prefer, therefore, to deal with the motion on its facts and the merits of the contentions it presents, rather than on the procedural grounds urged by the plaintiffs.

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[1] The facts, themselves, are not in dispute. They were stipulated to be true in open court at the hearing on the motion; others were the subject of a post-hearing written stipulation.

As will appear from what is said hereafter, the motion is granted in part and denied in part.

I.

In regard to the question of the proper construction to be placed on the Social Security Act of 1935, as amended, and whether the Maryland maximum grant regulation conflicts therewith, defendants point out that Maryland has had a maximum grant regulation in some form continuously since January 1, 1947. It is asserted that the Secretary of Health, Education and Welfare (HEW) has "approved" the Maryland regulation, as well as its counterpart in some twenty-seven other states, and that this "approval" is entitled to great weight, if, indeed, it is not conclusive, in deciding whether the regulation conflicts with any provision of the Act. The text of the maximum grant regulations in other states is not before us; nor is any evidence of how they are applied. Finally, it is contended that the legislative history of clause 9 of § 402[2] indicates that it has a more restrictive meaning than the one we ascribed to it, so that there is no conflict between it and the regulation.

We accept the correction that the Maryland maximum grant regulation is not new and that it has its counterpart elsewhere. We find that HEW has never expressly disapproved the regulation; whether it has approved it is another matter, as is the legal effect of what has been done. We state first, drawing on the parties' stipulation, what HEW has and has not done.

HEW has at no time issued any regulations dealing specifically with the problem of maximum grant regulations,

[2] Clause 9 is the portion of § 402, 42 U.S.C.A. § 602, which requires that a State AFDC plan *must* include a provision:

"(9) * * * effective July 1, 1951, that all individuals wishing to make application for aid to families with dependent children shall have the opportunity to do so, and that aid to families with dependent children shall be furnished with reasonable promptness to all eligible individuals * * *."

Since the 1968 amendments, clause 9 has become clause 10 of § 402.

nor has it circulated any reasoned decisions or statements detailing its position. Indeed, there is no indication whatever that any of the arguments urged in this proceeding or adopted in our previous opinion have been presented to HEW. The sole contacts which HEW has had with the regulation in issue, so far as we are informed by the parties, are as follows: (1) at various times HEW has "incorporated" revisions of the maximum grant regulation into Maryland's previously approved AFDC plan; (2) HEW issued, in October, 1962, a booklet entitled "State Maximums and Other Methods of Limiting Money Payments to Recipients," which details, *inter alia*, the AFDC maximum grants in the respective states employing such regulations; (3) an Interim Policy Statement of May 31, 1968, specifies that a state AFDC plan must provide by July 1, 1969, for increases in any maximum grants in order to reflect changes in living costs.

From the foregoing, we distill the obvious, namely, that HEW implicitly considers maximum grant regulations not to be violative of the Act. In view of the fact, however, that there is no indication from administrative decision, promulgated regulation, or departmental statement that the question of the conformity of maximum grants to the Act has been given considered treatment,[3] we believe that the various actions and inactions on the part of HEW are not entitled to substantial, much less to decisive, weight in our consideration of the instant case.

In adopting this view, we cast no doubt whatsoever upon the general doctrine that the views of administrative agencies entrusted with the administration of a statute are to be given due deference when issues of statutory interpretation arise. See, generally, Annot., *Administrative or Practical Construction of Statute as Precedent for Judicial Construction*, 84 L. Ed. 28 (1939). Nevertheless, whether administrative interpretation in the abstract is deemed to be

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[3] Some corroboration for this statement is found in the implicit assumption in the discussion of maximum family grants, Note, *Welfare's "Condition X,"* 76 Yale L. J. 1222, 1232-33 (1967).

"pertinent," to have "weight," to have "persuasive weight," or to be of such significance that it "ought not to be overruled without cogent reasons," *Anderson v. McKay*, 211 F. 2d 798, 805 (D.C. Cir.), *cert. den.*, 348 U.S. 836 (1954), the attitudes, practices and interpretations of an administrative agency are certainly not absolute rules of law but, at best, merely "helpful guides to aid courts in their task of statutory construction." *Sims v. United States*, 252 F. 2d 434, 438 (4 Cir. 1958), *aff'd*, 359 U.S. 108 (1959). The ultimate authorities on issues of statutory interpretations are the courts, *Volkswagenwerk v. FMC*, 390 U.S. 261, 272 (1968), which have the final responsibility to declare what a statute means. *Fishgold v. Sullivan Drydock & Repair Corp.*, 154 F. 2d 785, 790 (2 Cir.) (L. Hand, J.), *aff'd*, 328 U.S. 275 (1946). To the same effect, see, *e.g.*, *Folsom v. Pearsall*, 245 F. 2d 562, 564-65 (9 Cir. 1957); *Commissioner v. Winslow*, 113 F. 2d 418, 423 (1 Cir. 1940). Where a conflict arises between the administrative and judicial constructions of a statute, the latter will necessarily prevail. *Deeg v. Lumbermen's Mut. Cas. Co.*, 279 F. 2d 491, 494 (10 Cir. 1960); *Cory Corp. v. Sauber*, 266 F. 2d 58, 61 (7 Cir. 1959), *rev'd on other grounds*, 363 U.S. 709 (1960); *Louisiana Pub. Serv. Comm'n v. SEC*, 235 F. 2d 167, 172 (5 Cir. 1956), *rev'd on other grounds*, 353 U.S. 368 (1957); *Woods v. Benson Hotel Corp.*, 177 F. 2d 543, 546 (8 Cir. 1949). See, 1 Davis, *Administrative Law Treatise*, § 5.06, at 326-328 (1958). In determining the proper weight to be accorded to an administrative decision, account must be taken of the consistency of the agency's interpretation with the underlying purposes of the statute which is being construed. *P. Lorillard Co. v. FTC*, 267 F. 2d 439, 443 (3 Cir.), *cert. den.*, 361 U.S. 923 (1959). In no event is a court "compelled to follow an administrative interpretation that it regards as inconsistent with the legislative purpose of the provision in issue." *In re Petition of Chin Thloot Har Wong*, 224 F. S. 155, 165 (S.D. N.Y. 1963).

Furthermore, it is clear that the thoroughness with which an administrative agency has dealt with a particular prob-

lem of statutory construction is a highly relevant factor in determining the weight to be assigned to the agency's resolution of the matter. Such weight will be dependent upon "the thoroughness evident in * * * [the agency's] consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade, if lacking power to control." *Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1944). If the agency's construction has resulted from an uncontested non-adversary proceeding, it has been said that the agency's interpretation is entitled to "relatively little weight." *SEC v. Sterling Precision Corp.*, 393 F. 2d 214, 220 (2 Cir. 1968). See, *Fishgold v. Sullivan Drydock & Repair Corp.*, 328 U.S. 275, 290 (1946). Finally, to the argument that Congress has not stepped in to alter or amend HEW's apparent interpretation that Maryland's maximum grant regulation conforms to the Act, we are reminded of our Court of Appeals' admonition that "courts are properly chary of equating mere inaction with approval, in the absence of a solid foundation for the inference of conscious ratification [by Congess]." *Duncan v. Railroad Retirement Bd.*, 375 F. 2d 915, 919 (4 Cir. 1967).

If the unequivocal command that "aid * * * shall be furnished with reasonable promptness to *all* eligible individuals," were all that we must consider, we would not be disposed, in the light of the legal principles which we have set forth and of the limited nature of the administrative action taken by HEW in regard to maximum grant regulations, to assign controlling significance to HEW's apparent views. To the extent that these views hold that maximum grant regulations are consistent with the language and purposes of the Act, we would decline to follow them. See, *King v. Smith*, 392 U.S. 309, 333, n. 34 (1968).

We turn to the argument that the legislative history of clause 9 demonstrates that it has a more restricted meaning than we have given it. Essentially, defendants' argument is that the portion of the Social Security Act Amendments of 1950, 64 Stat. 549, which added clause 9, on which we

placed principal reliance in concluding that there was a conflict between the regulations and the Act, was addressed to a practice in Maryland and in other states of dealing with revenue crises in AFDC by instituting a freeze on the receipt of new AFDC applications, rather than to devise some other uniform or equitable way of reducing AFDC expenditures. The requirement of clause 9 — "that all individuals wishing to make application for aid to families with dependent children shall have the opportunity to do so" — was, so the argument runs, specifically directed to this practice. The "all eligible individuals" to whom aid must be furnished, the argument continues, are the applicants for aid referred to in the beginning of clause 9, and not the family members benefited by the application.

We reject defendants' second argument for the reasons set forth in footnote 9 of our original opinion. Although clause 9 may contemplate that the application for aid be made by a responsible adult, child-care institution, child-placement or child-care agency, it requires that the amount of aid granted be commensurate with the needs of all of those on behalf of whom an application is made. Defendants' argument is essentially that the command of the entire clause is met if the applicant, i.e., the responsible adult, is furnished some aid, even though the amount is less than that which the state has determined is the extent of need and appropriate benefit for the members of his family. If his needs as an individual are satisfied in whole or in part, the clause requires no more. The basic purpose of AFDC to provide support for "dependent children" makes the hollowness of this argument manifest.

We see nothing inconsistent between the claimed legislative intent as expressed in clause 9 and the liberal meaning we have given it. If the evil to be corrected was the states' freezing consideration of new applications for aid, it would not be unreasonable for Congress to say that the application should be received, and considered, and that the amount of aid should be granted promptly to *all* who were eligible, lest some state devise some other subterfuge, such as receiving an application and considering it but postpon-

ing any benefits thereon or granting less than the benefits indicated thereon until it was financially more convenient to do so.

More importantly, closer scrutiny of the legislative materials relevant to the purposes of clause 9 satisfies us that we have not expanded its meaning beyond the initial legislative intent in its enactment. The basic purpose of clause 9 was explained in the report of the House of Representatives where the bill, H. R. 6000, which added clause 9, originated.[4] H. R. 6000 was not reported by the Senate until the following session, and, while the House version required a state to furnish aid "promptly," clause 9 was amended in the Senate to require a state to furnish aid "with reasonable promptness." This substitution in phraseology was thought to assure that a state would have sufficient time to make investigations. It was the only amendment; otherwise, the

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[4] The pertinent sections of the report read:

"D. Opportunity to apply for and receive assistance promptly

Shortage of funds in aid to dependent children has sometimes, as in old-age assistance, resulted in a decision not to take more applications or to keep eligible families on waiting lists until enough recipients could be removed from the assistance rolls to make a place for them. As noted in the discussion of this problem in the section on old-age assistance, this difference in treatment accorded to eligible people results in undue hardship on needy persons and is inappropriate in a program financed from Federal funds. The requirement that State plans must provide opportunity to apply to all persons wishing to do so and that assistance shall be furnished promptly to all eligible families is included in the proposed amendments to title IV of the Social Security Act."

* * * * * *

"Requirement relating to opportunity to apply for assistance and receive it promptly.

The provisions of section 3(a) of the Social Security Act are also amended by the bill by the addition of a new clause (9). This clause would add a specific requirement designed to make it clear that a State plan, in order to be approved, must provide that all individuals wishing to make application for assistance shall have an opportunity to do so and that assistance shall be furnished promptly to all eligible individuals. This new requirement would take effect July 1, 1951."

H. R. Rep. No. 1300, 81st Cong., 1st Sess., pp. 48, 148 (1949).

Senate sought to achieve the same objectives as the House.[5] It should be stressed that H. R. 6000 also expanded AFDC (which was theretofore a program solely of aid to children) to include the relative with whom any dependent child is living. The purpose of the expansion was described in the report of the House Committee.[6] The essential emphasis,

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[5] "Title III — Amendments to Public Assistance and Maternal and Child Welfare Provisions of the Social Security Act

Requirements of State Plans

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Requirements relating to opportunity to apply for and receive assistance

The provisions of section 3(a) of the Social Security Act are also amended by the bill by the addition of a new clause (9). This clause would add a specific requirement designed to make it clear that a State plan, in order to be approved, must provide that all individuals wishing to make application for assistance shall have an opportunity to do so and that assistance shall be furnished with reasonable promptness to all eligible individuals. This new requirement would take effect July 1, 1951.

The same addition has been made by sections 321 and 341 of the bill to sections 402(a) and 1002(a), respectively, of the Social Security Act, although in the latter case the new clause is numbered (11).

These amendments proposed by the bill are the same in substance as those proposed on the same subject by the bill as passed by the House except that the latter would have required the assistance to be furnished 'promptly' instead of 'with reasonable promptness' as proposed by your committee. The change was made in order to assure the States reasonable time to make investigations and complete any other action necessary to determine eligibility and extent of need for assistance."

S. Rep. No. 1669, 81st Cong., 2nd Sess.; 2 U. S. Code Cong. Ser. 3470-71 (1950).

[6] "XIV. Aid To Dependent Children

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"A. Inclusion of mother or other relative caring for child

In the present law, aid to dependent children is defined as payments with respect to a dependent child. No specific provision is made for the need of the parent or other relative with whom the child is living. Particularly in families with small children, it is necessary for the mother or another adult to be in the home full time to provide proper care and supervision. Since the person caring for the child must have food, clothing, and

in this statement, on the needs of the dependent children, and the concept that aid to the relative with whom the children were living was necessary *so as not to diminish the realizable benefit to the children* belies the interpretation of clause 9 pressed by defendants.

Inexplicably, however, Congress, in the Social Security Amendments of 1967, P. L. 90-248, 81 Stat. 821, amended § 402 of the Act in a manner which may have a substantial effect on the apparent conflict between the regulation and the Act. The record, however, is insufficient for us to express any final conclusion.

The amendment, contained in § 213(b) of the Act, cited as Social Security Amendments of 1967, added a new clause

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other essentials, amounts allotted to the children must be used in part for this purpose if no other provision is made to meet her needs. The maximum monthly amount of assistance in which the Federal Government will now share is $27 for one child in a family and $18 for each child beyond the first.

Because of the lack of specific provision for Federal participation in assistance to the mother or other relative and the inadequacy of the $27 and $18 maximums to cover the cost of essentials for the children and an adult as well, States have been forced to make a very large proportion of payments larger than the maximum amounts subject to Federal sharing. In December 1948 about one-half of all payments were above the maximums. More than three-fourths of all payments exceeded these amounts in 24 States. Often States have been unable to make payments that were at all realistically related to the need of the dependent children and the relative caring for them.

To correct the present anomalous situation wherein no provision is made for the adult relative and to enable States to make payments that are more nearly adequate, the bill would include the relative with whom the dependent child is living as a recipient for Federal matching purposes. The maximum amount of assistance for a relative in which the Federal Government would share would be $27. The maximums of $27 for one child in a family, and $18 for each additional child, would remain unchanged. Thus, for a relative and one dependent child the maximum amount of the payment subject to Federal sharing would be $54 instead of $27. For a three-child family, the maximum would be $90 instead of $63."

H. R. Rep. No. 1300, 81st Cong., 1st Sess., pp. 45-46 (1949).

to § 402(a), to be known as clause 23, which requires, as an additional condition, that a state AFDC plan must:

> "provide by July 1, 1969, the amounts used by the State to determine the needs of individuals will have been adjusted to reflect fully changes in living costs since such amounts were established, *and any maximums that the State imposes on the amount of aid paid to families will have been proportionately adjusted.*" (Emphasis supplied.)

Section 213(a) amended various other sections of the original Act to provide that recipients under various programs need not suffer a reduction in benefits if they had income up to $7.50 per month, instead of the previous ceiling of $5.00 per month, i.e., 42 U.S.C.A. §§ 302(a)(1)(A)(i) [state old-age and medical assistance plans], § 1202(a)(8)(C) [state plans for aid to blind], § 1352(a)(8)(A) [state plans for the permanently and totally disabled], and § 1384(a)(14)(D) [state plans for aid to aged, blind or disabled or for such aid and medical assistance for aged].

Section 213 of the amending Act was added to the House Bill by amendment in the Senate, later concurred in by the House.[7] As it shows on its face, § 213(b) was designed to increase benefits to keep pace with increased living costs. The references to it in the committee reports are no more informative.[8] Elsewhere in the extensive amendments to

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[7] See discussion in Conference Report No. 1030, 90th Cong., 1st Sess., 2 U. S. Code Cong. Ser. 3179, 3208 (1967).

[8] Clause 23 was added by § 213(b) of the amending Act. As passed by the Senate, the amending Act added clause 23 by § 213(a) and referred to clause 23 as clause 24. In the Senate Report, the following was said:

> "Paragraph (5) of section 213(a) of the bill amends section 402(a) of the Act by adding (after the new clause (23) added to such sec. 402(a) of the act by sec. 211(a) of the bill) a new clause (24) which requires a State plan for the dependent children program to provide that by July 1, 1969, and at least annually thereafter, the amounts used by the State to determine the needs of individuals will be adjusted to reflect fully changes in living costs since such amounts were established, and that any

the original Act, benefits were increased generally,[9] the conditions attaching to AFDC benefits were liberalized to encourage AFDC recipients to make the transition to becoming self-supporting, and new protections to children in AFDC families and provisions to make more certain the fulfillment of parental responsibilities were added.[10]

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maximums that the State imposes on the amount of aid paid to families will be proportionately adjusted."

Senate Report No. 744, 90th Cong., 1st Sess., 2 U. S. Code Cong. Ser. § 133 (1967).

The Conference Report which recommended concurrence in the Senate amendment contained no discussion of its purpose or need, beyond the barest description of its terms. Conference Report No. 1030, 90th Cong., 1st Sess., 2 U.S. Code Cong. Ser. § 209 (1967).

[9] See, *e.g.*, Senate Report No. 744, 90th Cong., 1st Sess., 2 U. S. Code Cong. Ser. 2834, 2835 [old-age, survivors, and disability insurance], 2836 [health insurance], 2838 [public assistance].

[10] Senate Report No. 744, op. cit. n. 8. At p. 2837, the general program in this report was thus summarized:

"Aid To Families With Dependent Children

The bill would make the following reforms in the aid to families with dependent children programs:

(1) For the purpose of providing greater incentives for appropriate members of families drawing aid to families with dependent children (AFDC) payments to obtain employment so that they need no longer be dependent on the welfare rolls the bill would—

(a) exempt a portion of earned income for members of the family who can work;

(b) establish a new work incentive and training program for individuals to be administered by the Department of Labor upon referral by the State welfare agency;

(c) require State welfare agencies to assure adequate child care arrangements for the children of working mothers;

(d) require the State welfare agencies to establish a social service plan for each AFDC family; and

(e) modify the optional unemployed fathers program to provide for a uniform definition of unemployment throughout the United States.

In order to enable the States to implement these requirements, the Federal Government would supply Federal matching for services (including child welfare and day care) which the States would be required to furnish. Federal matching would also be

In the context in which clause 23 was added, that is to say, having regard to the overall amendments to the AFDC program made by the amending Act, we find it difficult to say that §213(b) represented a considered judgment by Congress that it wished to validate all maximum grant regulations and that it wished to depart from the basic objectives of prior Congresses, reaffirmed by it, that bene-

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provided for training, supervision, materials, and other items and services needed in the work incentive program."

The provisions of existing law and proposed changes to liberalize the earnings exemptions of dependent children are described at p. 2861.

The overall changes in the AFDC program are summarized at pp. 2982-83, as follows:

"The plan which the committee has developed, with the advice and help of the Department of Health, Education, and Welfare and the Department of Labor, amounts to a new direction for AFDC legislation. It follows that the basic outline of the bill passed by the House but incorporates certain desirable changes in the method of administration and program emphasis. The committee is recommending the enactment of a series of amendments to carry out its intent of reducing the AFDC rolls by restoring more families to employment and self-reliance.

The first series of amendments is designed to encourage and make possible the employment of adults in AFDC families. Three provisions are aimed at this purpose:

(1) the establishment of a work incentive program under the Department of Labor for the purpose of restoring members of AFDC families (including those with little or no work experience) to regular employment through counseling, placement services and training, and arranging for all others to get paid employment in special work projects to improve the communities in which they live;

(2) A requirement that all States furnish day-care services and other social services to make it possible for adult members of the family to take advantage of the work and training opportunities under the work incentive program; and

(3) A requirement that all States exempt part of the AFDC recipient's earnings to provide incentives for work in regular employment.

The second series of amendments would set up new protections for the children in AFDC families and would make more certain the fulfillment of parental responsibilities:

(1) A requirement that the States establish a comprehensive plan of social services for each AFDC child to assure

fits under AFDC be granted to *all* eligible individuals and that to the maximum extent feasible for their interest dependent children be kept in their own family units.[11] The brevity of the discussion of §213(b) in the legislative reports, as compared to the considered treatment of other amendments, leads to the reasonable assumption that Congress gave no real thought to the effect of maximum grant regulations in its oft-expressed basic legislative purposes,

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the child the maximum opportunity to become a productive and useful citizen;

(2) A requirement that State welfare agencies refer cases of child abuse or neglect to appropriate law-enforcement agencies and courts;

(3) A requirement that protective payments and vendor payments be made where appropriate to protect the welfare of the children;

(4) Federal payments for additional foster care situations under the AFDC program;

(5) A requirement to assure that fathers who desert or abandon their families will contribute to the support of their families by using available tax records and the enforcement power of the Internal Revenue Service. In addition, there would be a requirement that the States establish separate units to enforce the child-support laws, including financial help to the courts and prosecuting agencies to enforce court orders for support; and

(6) A program of emergency assistance to families with minor children for a temporary period.

(7) A more definitive and uniform program for the children of unemployed fathers.

The third series of amendments would make other changes in the program designed to deal with the expanding AFDC rolls.

(1) A requirement that all States establish programs to reduce the number of children born out of wedlock; and

(2) A requirement that all States offer family planning services to appropriate AFDC recipients."

[11] As part of the amending Act, Congress also amended § 401, 42 U.S.C.A. § 601, in a technical respect not itself significant here. What is significant is that an amendment was made to the section containing the recital that a purpose of AFDC was "to help maintain and strengthen family life" without any alteration thereof. Presumably, family life is strengthened and maintained by holding a family together. Yet, as has been previously shown, the Maryland maximum grant regulation in its operation encourages the very opposite.

but simply concluded that if it was increasing benefits generally it should include a direction that maximum grants should be increased, also. Yet, clause 23 is unmistakable recognition by Congress that some states have maximum grant regulations, and, utilizing accepted canons of statutory construction, we are bound to give effect to this recognition.

The problem is what is the scope of Congressional recognition and implied approval of maximum grant regulations. The language of Congress in clause 23 is general and the Congressional intent expressed therein is uncertain. Manifestly, it cannot validate that which the Constitution does not permit. Equally important, it must be construed in the light of all other provisions of the Social Security Act, as amended, so as to achieve an harmonious whole. Even if clause 23 is treated as an implied amendment of clause 9, we do not know, and the parties have offered no proof to show us, what are the terms and provisions of the maximum grant regulations of other states and how they are applied. To be specific, we do not know if they are similar and are uniformly applied like that of Maryland to encourage the disbanding of large families so that Congressional recognition may be deemed an amendment of §402 of the Act, as well as a departure from the original legislative intent of clause 9 and the underlying purposes of the AFDC program to strengthen family life.

In short, clause 23 may well be properly construed to imply recognition by Congress of the concept of maximum grant regulations in the abstract without the additional implication that a congressional imprimatur has been placed upon every conceivable maximum grant regulation, no matter what its operative effects may be in furthering or retarding basic congressional policy. Thus, while Congress has indicated its view that a maximum grant regulation is not *per se* in conflict with the Act, prior to the 1967 amendments, as we have construed it, we cannot, on the present record, impute to Congress the intention to endorse specifically the Maryland regulation with its pernicious results, absent a statement of endorsement or circumstances of endorsement which speak with unmistak-

able clarity. In other circumstances, we would direct the parties to present additional proof to enable us to resolve this issue. We do not find this necessary in the instant case, however, because we are still satisfied that the regulation cannot hurdle the constitutional barrier of the equal protection clause.

II.

In regard to the question of whether Maryland's maximum grant regulation denies equal protection of the law, the evidence before us at the original trial was crystal-clear that the only reason why the maximum grant regulation was continued was financial, i.e., that the Governor and General Assembly of Maryland had failed to appropriate sufficient funds to finance the cost of AFDC, absent the operative effect of the maximum grant regulation in reducing expenditures. Now defendants assert that, at least initially, the maximum grant regulation was rationally supportable for constitutional purposes on the basis of the so-called "principle of less benefit." The thrust of the principle in the case at bar is that public assistance or welfare programs should not serve as an inducement to individuals to abandon useful employment, or to decline useful employment, or to abandon their families and the obligation to support them. Accordingly, the benefits derivable from such assistance should, in no event, be greater than the remuneration which could be achieved from gainful employment. In order to achieve this result, so the argument runs, the maximum grant is keyed to the minimum wage, so that an individual family receiving assistance would obtain no more than a family in which one member thereof was employed at the minimum wage level.

Specifically, under the principle of "less benefit," defendants assert that the maximum grant regulation serves a rational function in that it (a) discourages desertion of children by the wage earner or the wage earners of the family, (b) it provides an inducement to a surviving parent to seek employment, and (c) it encourages parents to limit the sizes of their families.

Even if we assume that the maximum grant regulation was adopted for the purposes that defendants assert,[12] and even if we accept the contention that the validity of the regulation under the equal protection clause may be saved by the original purposes for its promulgation, notwithstanding that those are not the purposes for its continuance, we find no merit in the argument that the less benefit principle may validate this regulation. We reach this conclusion because the regulation on its face is not limited to any subcategories of AFDC eligibles, but purports to apply, and is applied, to AFDC eligibles as a group. While the purposes which defendants assert may have a logical connection with one or more subcategories of AFDC eligibles, alone or in combination, they have no logical connection with the group as a whole; hence, the regulation is invalid on its face for overreaching. We turn to a consideration of the claimed rational functions which defendants assert.

AFDC is not limited to dependent children or families with dependent children deprived of parental support or care by reason of continued absence from the home. Discouragement of desertion as a rational basis for the maximum grant regulation can have application only to the continued absence subcategory of AFDC; it can have no application to dependency which arises because of death, unemployment, or physical or mental incapacity of the wage earner. The named plaintiffs Junius Gary and Jeanette Gary are examples of eligibles to whom this purpose has no logical application. Even when eligibility for AFDC is predicated upon continued absence from the home, dependent children and families with dependent children may still receive payments in excess of the maximum grant, if those children in number in excess of the cut-off point are placed with other relatives, a child-care institution, a child-placement or a child-care agency. A parent

[12] On the evidence before us the conclusion is equally tenable that the maximum grant regulation was adopted to make the entire AFDC program more palatable politically. Perhaps those purposes were inspired, however, by unarticulated notions of the "principle of less benefit."

who is willing to desert to give his children or his family eligibility for AFDC on this basis can hardly be presumed to voice stringent objection to further breakup of the family unit to gain advantage from this unusual aspect of the Maryland regulation. Thus, the maximum grant regulation not only subverts the statutory goal of preserving intact the family unit, but it is also ineffective to discourage eligibility by continued absence from the home.

The same is true with regard to the claimed purpose of inducing a surviving parent to seek employment, namely, that it is inapplicable to inability to work or lack of employment and is ineffective to achieve its purpose even in the subcategory to which it might be efficacious. Other considerations also come into play. The basic purpose of AFDC is to aid needy *children*, and to achieve this schedules of need based upon the cost-of-living have been established by the state. The principle of "less benefit" can have no application to those under the age when the state will permit them to work.[18] The evidence indicates that only a relatively small percentage of families (166 out of 2,537, or 6.5%) receiving AFDC payments are classified as having employable numbers. To what percentage of the 6.5% of total AFDC beneficiaries the maximum grant regulation is applicable is not disclosed. The evidence does show that the plaintiffs Junius Gary and Jeanette Gary, his wife, are receiving AFDC payments because of sickness and disability, and neither they nor the named plaintiff Linda Williams are employable. It is simply irrelevant to apply the "less benefit" principle of encouraging employment to individuals who could not, in any event, be gainfully employed.

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[18] Like every enlightened jurisdiction, Maryland regulates the employment of minors. Those under 14 are prohibited from engaging in any gainful employment. Those over 14 but under 16 may not be employed during school hours, with certain exceptions, or in certain occupations. All minors under 18 are prohibited from engaging in certain occupations and females over 16 but under 18 from engaging in certain occupations permissible for males. See, generally, 8B Ann. Code of Md., Art. 100, §§ 4, *et seq.*

These ages should be compared to the age limitations to qualify one as a "dependent child," i.e., under the age of 18, or, in the case of a student, under the age of 21. 42 U.S.C.A. § 606.

The state may have a legitimate interest in reducing its welfare rolls by encouraging those capable of so doing to seek and maintain gainful employment, but this goal can be furthered by such devices as work incentive programs, which are aimed precisely at aiding and encouraging those who are in fact employable,[14] or by limiting the application of the regulation to those to whom it may be said to have some logical relation.

Defendants' contention that the maximum grant regulation was also initially promulgated to encourage parents to limits the sizes of their families is diffidently pressed. This asserted purpose merits little discussion. If, indeed, this is a purpose, the regulation, again, invalidly overreaches. It is not limited to children born after AFDC eligibility is established and, from the evidence, it appears that in the case of the named plaintiffs at bar no children

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[14] We call attention to the provisions of § 407 of the Act, 42 U.S.C.A. § 607, which, beginning in 1961, expanded the definition of "dependent child" to include needy children deprived of parental support or care by reason of the unemployment of a parent. This section requires as part of the state's AFDC plan, in addition to the other conditions of § 402 of the Act, that the state provide such assurances as will satisfy HEW that fathers of dependent children will be referred to the Secretary of Labor for participation under a work incentive program, and for providing vocational education to encourage the retraining of individuals capable of being retrained. Moreover, the state is permitted to deny AFDC to any child or eligible relative "if, and for so long as, such child's father is not currently registered with the public employment offices in the state * * *." § 407(b)(2)(C)(i).

It is significant that the 1968 Amendments in expanding the work incentive program also limited its application to "unemployed fathers" rather than "unemployed parents." The legislative history of the 1968 Amendments makes clear that the new work incentive program which they established was not intended to apply to "a mother who is in fact caring for one or more children of preschool age, if such mother's presence in the home is necessary and in the best interest of the children." Senate Report No. 744, 90th Cong., 1st Sess., 2 U. S. Code Cong. Ser. 2859, 2984 (1967). Plaintiff, Linda Williams is literally within that category. Thus, there is legislative recognition that the principle of less benefit was not intended to apply to her and others similarly situated.

have been born after the circumstances to produce AFDC eligibility occurred.[15]

Thus, in the case of the named plaintiffs at bar, it appears that the claimed purposes of the maximum grant regulation are either totally inapplicable or patently ineffective to accomplish their objectives, and consideration of the several bases of eligibility for AFDC within the group on whose behalf the named plaintiffs sue, indicates that the same is true of other categories, the substantiality of which is not disclosed. Because it cuts too broad a swath on an indiscriminate basis as applied to the entire group of AFDC eligibles to which it purports to apply, the maximum grant regulation cannot be sustained under the equal protection clause of the Fourteenth Amendment to the Constitution of the United States.

III.

We modify our previous opinion to the extent that we do not decide whether Maryland's maximum grant regulation conflicts with the Act, as amended. On the constitutional basis of our prior decision, however, we find no reason to reach a result different from that previously announced. We reiterate our previous conclusion that Maryland's maximum grant regulation transgresses the equal protection clause of the Fourteenth Amendment to the Constitution of the United States.

The Clerk is directed to enter a short order on the docket, granting in part, and denying in part, defendants' motion, as set forth in this opinion. In accordance with our previous instructions, plaintiffs have submitted a proposed form of decree. Defendants shall present their com-

[15] The objective of family planning is part of the Act and treated with greater specificity and logic therein. By the 1968 Amendments, § 402 of the Act, 42 U.S.C.A. § 602, now requires, as part of the state's AFDC plan, that the state develop a program to achieve the objective of "preventing or reducing the incidence of births out of wedlock and otherwise strengthening family life," and for implementing this program by assuring that "in all appropriate cases family planning services are offered to them [applicants for AFDC] * * *." § 402(a)(15) of the Act, 42 U.S.C.A. § 602(a)(15).

ments thereon, and, if they be so advised, their suggested form of decree, within five days.

/s/ HARRISON L. WINTER,
United States Circuit Judge.

/s/ ROSZEL C. THOMSEN,
Chief Judge,
United States District Court
for the District of Maryland.

/s/ ALEXANDER HARVEY, II,
United States District Judge.

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ORDER

In accordance with the opinions of the United States District Court for the District of Maryland dated December 13, 1968, and February 25, 1969, and the Court being of the view that from the facts and for the reasons stated therein plaintiffs are suffering and will suffer irreparable injury unless defendants are permanently restrained from enforcing the maximum grant regulations described therein.

It is hereby ORDERED, by the United States District Court for the District of Maryland, this 18th day of March, 1969, that the defendants be and they are hereby permanently enjoined from enforcing the maximum grant regulation applicable to all AFDC recipients generally set forth in the Maryland Manual of the Department of Social Services, Part II, Rule 200, Section VII, 1, against the plaintiffs named in this action and the class represented; provided that the effectiveness of this Order is stayed for a period of forty-five days.

/s/ HARRISON L. WINTER,
United States Circuit Judge.

/s/ ROSZEL C. THOMSEN,
Chief Judge,
United States District Court.

/s/ ALEXANDER HARVEY, II,
United States District Judge.

## APPENDIX B

### P.L. 87-543 Laws of 87th Cong.—2nd Sess.

* * * * * *

### Protective Payments Under Dependent Children Program

Sec. 108. (a) Section 406(b) of the Social Security Act is amended by inserting "(1)" after "includes" and by inserting before the semicolon at the end thereof: ", and (2) payments with respect to any dependent child (including payments to meet the needs of the relative, and the relative's spouse, with whom such child is living) which do not meet the preceding requirements of this subsection, but which would meet such requirements except that such payments are made to another individual who (as determined in accordance with standards prescribed by the Secretary) is interested in or concerned with the welfare of such child and relative, but only with respect to a State whose State plan approved under section 402 includes provision for—

"(A) determination by the State agency that the relative of the child with respect to whom such payments are made has such inability to manage funds that making payments to him would be contrary to the welfare of the child and, therefore, it is necessary to provide such aid with respect to such child and relative through payments described in this clause (2);

"(B) making such payments only in cases in which such payments will, under the rules otherwise applicable under the State plan for determining need and the amount of aid to families with dependent children to be paid (and in conjunction with other income and resources), meet all the need of the individuals with respect to whom such payments are made;

"(C) undertaking and continuing special efforts to develop greater ability on the part of the relative to manage funds in such manner as to protect the welfare of the family;

"(D) periodic review by such State agency of the determination under clause (A) to ascertain whether conditions justifying such determination still exist, with provision for termination of such payments if they do not and for seeking judicial appointment of a guardian or other legal representative, as described in section 1111, if and when it appears that the need for such payments is continuing, or is likely to continue, beyond a period specified by the Secretary;

"(E) aid in the form of foster home care in behalf of children described in section 408(a); and

"(F) opportunity for a fair hearing before the State agency on the determination referred to in clause (A) for any individual with respect to whom it is made".

* * * * * *

P. L. 90-248 LAWS OF 90TH CONG. — 1ST SESS.

Authority To Disregard Additional Income of Recipients of Public Assistance

Sec. 213. (a) (1) Section 2(a) (10) (A) (i) of the Social Security Act is amended by striking out "not more than $5" and inserting in lieu thereof "not more than $7.50".

(2) Section 1002(a) (8) (C) of such Act is amended by striking out "not more than $5" and inserting in lieu thereof "not more than $7.50".

(3) Section 1402(a) (8) (A) of such Act is amended by striking out "not more than $5" and inserting in lieu thereof "not more than $7.50".

(4) Section 1604(a) (14) (D) of such Act is amended by striking out "not more than $5" and inserting in lieu thereof "not more than $7.50".

(b) Section 402(a) of such Act is amended by inserting before the period at the end thereof the following: "; and (23) provide that by July 1, 1969, the amounts used by the

State to determine the needs of individuals will have been adjusted to reflect fully changes in living costs since such amounts were established, and any maximums that the State imposes on the amount of aid paid to families will have been proportionately adjusted".

Part 2 — Medical Assistance Amendments

Limitation on Federal Participation in Medical Assistance

Sec. 220. (a) Section 1903 of the Social Security Act is amended by adding at the end thereof the following new subsection:

"(f) (1) (A) Except as provided in paragraph (4), payment under the preceding provisions of this section shall not be made with respect to any amount expended as medical assistance in a calendar quarter, in any State, for any member of a family the annual income of which exceeds the applicable income limitation determined under this paragraph.

"(B) (i) Except as provided in clause (ii) of this subparagraph, the applicable income limitation with respect to any family is the amount determined, in accordance with standards prescribed by the Secretary, to be equivalent to 133⅓ percent of the highest amount which would ordinarily be paid to a family of the same size without any income or resources, in the form of money payments, under the plan of the State approved under part A of title IV of this Act.

"(ii) If the Secretary finds that the operation of a uniform maximum limits payments to families of more than one size, he may adjust the amount otherwise determined under clause (i) to take account of families of different sizes."

* * * * * *

Interim Policy May 31, 1968

Need — Requirements

For State Public Assistance Plans

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* * * * * *

U. S. Department of Health, Education, and Welfare
Social and Rehabilitation Service
Office of the Administrator

* * * * * *

Interim Policy

3. Requirements for State Plans:

A State plan for OAA, AFDC, AB, APTD or AABD must, as specified below:

A. *General:*

Provide that the determination of need and amount of assistance for all applicants and recipients will be made on an objective and equitable basis and all types of income will be taken into consideration in the same way, except where specifically authorized by Federal statute.

B. *Standards of Assistance:*

1. Specify a State-wide standard, expressed in money amounts, to be used in determining (i) the need of applicants and recipients and (ii) the amount of the assistance payment.
2. Provide that by July 1, 1969, the State's standard of assistance for the AFDC program will have been adjusted to reflect fully changes in living costs since such standards were established, and

and any maximums that the State imposes on the amount of aid paid to families will have been proportionately adjusted.

3. Provide that the standard will be uniformly applied throughout the State.
4. Include the method used in determining needs, which must be one of the three methods described in "Guides and Recommendations" or a comparable method which meets the conditions specified in such guides and is approved by the Assistance Payments Administration.

* * * * * *

Federal Register, Vol. 34, No. 19 — Wednesday, January 29, 1969

Chapter II — Social and Rehabilitation Service (Assistance Programs), Department of Health, Education, and Welfare

Part 233 — Coverage and Conditions of Eligibility in Financial Assistance Programs

Need and Amount of Assistance

Interim Policy Statement No. 4 setting forth the regulations for the programs administered under titles I, IV — Part A, X, XIV, and XVI of the Social Security Act, with respect to need, was published in the Federal Register of July 17, 1968 (33 F.R. 10230). Views of interested persons were requested, received and considered, and, in the light thereof, certain changes in the regulations were made. The following are the major changes: (1) The method for disregard of earned income has been modified. In arriving at the amount of earned income to be applied against the assistance budget the amount to be disregarded is to be deducted from gross income rather than from net income. Next, the amount allowed for work expenses is to be deducted. The remaining amount is then applied against the assistance budget (§ 233.20(a)(7)). (2) The regulations now permit several options for the disregard of income in

the AFDC program prior to July 1, 1969, not included in the Interim Policy (§ 233.20(a)(11) (i) and (ii)). (3) In regard to the requirement to adjust AFDC standards by July 1, 1969 the regulations now make it clear that while States must update their standards, if the States do not have the money to pay according to such standards they may make a ratable reduction (Section 233.20(a)(2) (ii)).

Accordingly, such regulations, as amended, are hereby codified by adding a new § 233.20 in Part 233, Chapter II of Title 45 of the Code of Federal Regulations as set forth below.

§ 233.20 Need and amount of assistance.

(a) *Requirements for State Plans.* A State Plan for OAA, AFDC, AB, APTD or AABD must, as specified below:

(1) *General.* Provide that the determination of need and amount of assistance for all applicants and recipients will be made on an objective and equitable basis and all types of income will be taken into consideration in the same way, except where otherwise specifically authorized by Federal statute.

(2) *Standards of assistance.* (i) Specify a statewide standard, expressed in money amounts, to be used in determining (*a*) the need of applicants and recipients and (*b*) the amount of the assistance payment.

(ii) In the AFDC plan, provide that by July 1, 1969, the State's standard of assistance for the AFDC program will have been adjusted to reflect fully changes in living costs since such standards were established, and any maximums that the State imposes on the amount of aid paid to families will have been proportionately adjusted. In such adjustment a consolidation of the standard (i.e., combining of items) may not result in a reduction in the content of the standard. In the event the State is not able to meet need in full under the adjusted standard, the State may make ratable reductions in accordance with subparagraph (3)(viii) of this paragraph. Nevertheless, if a State maintains a system of dollar maximums, these maximums

must be proportionately adjusted in relation to the updated standards.

(iii) Provide that the standard will be uniformly applied throughout the State.

(iv) Include the method used in determining needs, which must be one of the three methods described in "Guides and Recommendations" or a comparable method which meets the conditions specified in such guides and is approved by the Assistance Payments Administration.

(v) If the State agency includes special need items in its standard, (*a*) describe those that will be recognized, and the circumstances under which they will be included, and (*b*) provide that they will be considered in the need determination for all applicants and recipients requiring them.

(vi) If the State chooses to establish the need of the individual on a basis that recognizes, as essential to his well-being, the presence in the home of other needy individuals, (*a*) specify the persons whose needs will be included in the individual's need, and (*b*) provide that the decision as to whether any individual will be recognized as essential to the recipient's well-being shall rest with the recipient.

(3) *Income and resources; OAA, AFDC, AB, APTD, AABD.* (i) Specify the amount and types of real and personal property, including liquid assets, that may be reserved, i.e., retained to meet the current and future needs while assistance is received on a continuing basis. In addition to the home, personal effects, automobile and income producing property allowed by the agency, the amount of real and personal property, including liquid assets, that can be reserved for each individual recipient shall not be in excess of two thousand dollars. Policies may allow reasonable proportions of income from businesses or farms to be used to increase capital assets, so that income may be increased.

(ii) Provide that, in establishing financial eligibility and the amount of the assistance payment: (*a*) All income and

resources, after policies governing the allowable reserve, disregard or setting aside of income and resources have been applied, will be considered in relation to the State's standard of assistance, and will first be applied to maintenance costs; (*b*) if agency policies provide for allocation of the individual's income as necessary for the support of his dependents, such allocation shall not exceed the total amount of their needs as determined by the statewide standard; (*c*) only such net income as is actually available for current use on a regular basis will be considered, and only currently available resources will be considered; (*d*) current payments of assistance will not be reduced because of prior overpayments unless the recipient has income or resources currently available in the amount by which the agency proposes to reduce payment; except that where there is evidence which clearly establishes that a recipient willfully withheld information about his income or resources, such income or resources may be considered in the determination of need to reduce the amount of the assistance payment in current or future periods; and (*e*) income and resources will be reasonably evaluated.

(iii) Provide that no inquiry will be made of the amount of earnings of a child under 14 years of age.

(iv) Provide that, in determining the availability of income and resources, the following will not be included as income: (*a*) Income equal to expenses reasonably attributable to the earning of income; (*b*) loans and grants, such as scholarships, obtained and used under conditions that preclude their use for current living costs; and (*c*) home produce of an applicant or recipient, utilized by him and his household for their own consumption.

(v) Provide that agency policies assure that when support payments by absent parents have been ordered by a court, a regular amount of income is available monthly to meet the determined needs of the mother and children, whether or not the support payments are received regularly, and the agency does not delay or reduce public assistance payments on the basis of assumed support which is not actually available.

(vi) If the State agency holds relatives responsible for the support of applicants and recipients, (*a*) include an income scale for use in determining whether responsible relatives have sufficient income to warrant expectation that they can contribute to the support of applicants or recipients, which income scale exceeds a minimum level of living and at least represents a minimum level of adequacy that takes account of the needs and other obligations of the relatives; and (*b*) provide that no request will be made for contributions from relatives whose net cash income is below the income scale. In family groups living together, income of the spouse is considered available for his spouse and income of a parent is considered available for children under 21.

(vii) If the State agency establishes policy under which assistance from other agencies and organizations will not be deducted in determining the amount of assistance to be paid, provide that no duplication shall exist between such other assistance and that provided by the public assistance agency. In such complementary program relationships, nonduplication shall be assured by provision that such aid will be considered in relation to: (*a*) The different purpose for which the other agency grants aid, such as vocational rehabilitation; (*b*) the provision of goods and services that are not included in the statewide standard of the public assistance agency, e.g., a private agency might provide money for special training for a child or for medical care when the public assistance agency does not carry this responsibility; or housing and urban development relocation adjustment payments for items not included in assistance standards; or (*c*) the fact that public assistance funds are insufficient to meet the total amount of money determined to be needed in accordance with the statewide standard. In such instances, grants by other agencies in an amount sufficient to make it possible for the individual to have the amount of money determined to be needed, in accordance with the public assistance agency standard, will not constitute duplication.

(viii) Provide that payment will be based on the determination of the amount of assistance needed and that, if

full individual payments are precluded by maximums or insufficient funds, adjustments will be made by methods applied uniformly statewide.

(ix) Provide that the agency will establish and carry out policies with reference to applicants' and recipients' potential sources of income that can be developed to a state of availability.

* * * * * *

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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1969

**No. 131**

EDMUND P. DANDRIDGE, JR. CHAIRMAN OF THE MARYLAND STATE BOARD OF PUBLIC WELFARE, et al.,

*Appellants,*

vs.

LINDA WILLIAMS, et al.,

*Appellees.*

## Brief of the State of California Amicus Curiae in Support of Appellants

On Appeal From the United States District Court for the District of Maryland

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*Appellants,*

VS.

LINDA WILLIAMS, et al.,

*Appellees.*

---

## Brief of the State of California Amicus Curiae in Support of Appellants

On Appeal From the United States District Court for the District of Maryland

### INTEREST OF THE STATE OF CALIFORNIA

On August 28, 1969, in *Kaiser v. Montgomery,* No. 49613 Civil, United States District Court for the Northern District of California, a specially constituted three-judge court, one judge dissenting, preliminarily enjoined enforcement of the maximum aid table in California Welfare & Institutions Code section 11450(a) and all regulations promulgated thereunder. A copy of the court's memorandum opinion and the dissenting opinion are attached hereto as Appendix A. The opinions are not as yet officially reported. Appendix page 4. Footnote 3 sets forth the California statutory maximums. Notice of appeal to this court was filed on September 5, 1969.

Although the California statutes and regulations are not identical in language with those of Maryland, they are similar in purpose.[1] In order to preserve the right of a state legislature to set its own welfare policies in light of its available resources, the State of California enters this case as amicus curiae in support of the argument and position of the State of Maryland.

## ARGUMENT

### The Additional Fiscal Burden Placed On The Already Over-Burdened Fiscal Resources of the State of California If the Decision Below Is Not Reversed Will Inexorably Lead To A Lower Level of Benefits Available to Welfare Recipients.

California has a state-supervised county-administered public assistance system covering all of the federally aided public assistance programs. For the fiscal year 1969-70 it has been estimated that in California over one and one-half million persons, including over 741,000 children, will be on aid each month with a total expenditure for cash assistance, social services and administration of almost 1.6 billion dollars.[2] County governments participate in the non-federal share of the cost of financing these programs and in addition bear the total cost of the general assistance program which in California is a county responsibility. California and its counties are facing a taxpayer's revolt largely due to soaring costs of the health and welfare programs.

Denial of the power in the state legislature to set the level of benefits it will pay a family to meet the current state set standard of need, will cost the taxpayers a total

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1. California Welfare & Institutions Code section 11450(a) does not impose an absolute ceiling on aid to a family. $6.00 is paid for the tenth child (total aid of $392.00 with one eligible parent or $411.00 if two eligible parents) and $6.00 for each additional child.

2. Statement by John C. Montgomery, Director, California Department of Social Welfare to President's Commission on Income Maintenance Programs, Los Angeles, California, May 24, 1969.

of $40,764,700.00 for the balance of this fiscal year (December 1969 through June 1970). Of this total, the federal share will be $19,380,600.00, the state's share $14,434,300 and the counties' share $6,949,800. See affidavit of John M. McCoy, Chief of the Program Estimates Bureau, California State Department of Social Welfare, attached hereto as Appendix B.

The fiscal import of an adverse decision will not be limited to these substantial amounts. The state set allowance for housing for Aid to Families with Dependent Children recipients was held to be inadequate by a State Court in *Ivy v. Montgomery,* Superior Court State of California, City and County of San Francisco, No. 592705. This case is now on appeal. The trial court directed the state to establish standards which will insure the safe, healthful housing required by California Welfare & Institutions Code section 11452. Payment of such standards was ordered as limited by the maximum participating base subject to the ultimate decision in *Kaiser v. Montgomery.* An increase in the housing allowance above the current average of $63.00 by $30.00 will cost $65,660,100; (state and local share $34,437,800.00) for the balance of the fiscal year if the statutory maximums established by California Welfare & Institutions Code section 11450(a) are held unconstitutional. An increase of $45.00 per month will cost $100,728,300 (state and local share $52,811,800). An increase of $60.00 per month to bring the average housing allowance to $123.00 will cost $136,712,-600 (state and local share $71,660,700). See Appendix B.

Demonstrative of the merits of Maryland's "less benefit" position is *Macias v. Robert H. Finch, John C. Montgomery, Frederick B. Gillette,* United States District Court, Northern District of California No. 50956 Civil, now pending

before a specially constituted three-judge court. Plaintiff Tarin as an unemployed father received Aid to Families with Dependent Children—Unemployed father for his family (wife and 12 children) of $424.00 per month, the statutory maximum. Under the state set cost schedule the Tarin family's needs total $685.00. He is now fully employed as defined by the Social Security Act and regulations of the Secretary of the Department of Health, Education and Welfare. His take home pay is $308.80. Plaintiff *Macias* has a wife and 10 children. Welfare payments, the statutory maximum, amounted to $411.00. The Macias family's needs under the cost schedule total $554.00. He is now fully employed with a take home pay of $390.00. The relief sought by plaintiffs is,

> "Declare that 42 U.S.C. §§ 606(a) and 607 and Cal. Welfare & Institutions Code § 11250 are repugnant to the Fifth and Fourteenth Amendments to the United States Constitution and to Article 1 § 11 of the California Constitution and are therefore void insofar as said sections purport to render ineligible for assistance under the AFDC program any person solely on the ground that said person or a parent or relative of said person is employed fulltime."

If the state determined maximum participating base is held unconstitutional there will be little or no incentive for welfare recipients, particularly those with large families, to seek employment. The root of this problem is the well known fact that a man's wages are not geared to the size of his family, but instead by the value placed on his service through the play of market forces. The AFDC program for the unemployed father is optional with the states. *King v. Smith*, 392 U.S. 309 (1968). California and some 23 other states have elected to provide aid for children in need be-

cause their fathers are unemployed. The impact of removal of maximum grants may very well lead to California eliminating this highly desirable but controversial program in order to conserve available limited fiscal resources.

## CONCLUSION

The recognizable inequities in public assistance will not be remedied but exacerbated by this Court's affirmance of the decision below. The executive and legislative branches of the federal government are studying these problems. Judicial interference at this point will serve only to confuse rather than clarify the traditional responsibility of the legislative branch of the government. Surely if the "separation of powers" doctrine has any meaning the state and federal legislatures should be unimpeded in their search for equitable solutions realistically gauged to the fiscal resources available to accomplish this end.

For the foregoing reasons the State of California adopts and joins in the argument of the State of Maryland for the reversal of the lower court.

Respectfully submitted,

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Attorney General of the
State of California

ELIZABETH PALMER
Deputy Attorney
General

*Attorneys for Amicus Curiae*
*State of California*

**(Appendices follow)**

## *Appendix A*

*United States District Court*
*For the Northern District of California*

No. 49613 Civil

ERNESTINE KAISER, et al., *Plaintiffs,*

vs.

JOHN MONTGOMERY, et al., *Defendants.*

Before Hamlin, Circuit Judge, and
Wollenberg and Zirpoli, District Judges.

### MEMORANDUM OPINION

Plaintiffs bring this action on behalf of themselves and all others similarly situated whose monthly payments under California's Aid to Families with Dependent Children (AFDC)[1] are discriminatorily limited by California Welfare and Institutions Code § 11450(a) and pursuant regulations to amounts less than their monetary needs as determined by the Department of Welfare of the State of California, its Director and county administrators. Plaintiffs challenge said statute and pursuant regulations on the grounds that the limitations imposed thereby lack any reasonable basis in light of the purpose of the assistance program and that the statute arbitrarily and capriciously

1. The federal statute entitles the program "Aid and Services to Needy Families with Children." 76 Stat. 185. The California Welfare & Institutions Code refers frequently to "needy children" but does not give the assistance program a name. Throughout this opinion, the program will be referred to as AFDC (Aid to Families with Dependent Children) according to the usage of the parties and defendant's Cost Schedules.

deprives certain AFDC recipients of assistance sufficient to meet their state-determined need but at the same time allows other AFDC recipients to receive assistance adequate to meet their state-determined need.[2]

Plaintiffs assert that the above facts constitute a denial of equal protection of the laws in violation of the Fourteenth Amendment to the Constitution.

Their argument is essentially the following: The California Department of Social Welfare makes payments to needy children according to the provisions of Welfare & Institutions Code §§ 11202, 11250 and 11452. To determine the amount of need generated by each recipient, the Department compiles for each county a "Cost Schedule for Family Budget Units." This Cost Schedule provides the starting point for determining a particular recipient's need. The Cost Schedule sets forth amounts representing the combined allowance for the following items: Food, clothing, personal needs, recreation, transportation, household operations, education and incidentals, utilities, housing, and intermittent needs. The combined allowance represents that state's estimate of need to cover the above items. The amount allocated by the Cost Schedule to cover each of the above items varies according to the recipient's age, sex, county of residence, and according to whether the relatives with whom the child is living are themselves needy. For example, where the supporting relatives are needy, the state-determined need of an infant child is $97.00 per month, whereas the state-determined need of a teenager is $112.00 for a female and $119.00 for a male. Where the supporting relatives are not needy, the state-determined

2. The defendant admits that a monthly average of 47% of AFDC recipients were denied their state-determined needs to some extent during 1967-68, while 53% had their state-determined needs fully met.

need of an infant child is $46.50, and the state-determined need of a teenager is $61.25 for a female and $67.10 for a male. The recipient's county of residence is considered by the state as a determinative factor in establishing need because the cost of living varies widely from county to county within the state. The Department issues a different Cost Schedule for each county according to that county's particular cost of living.

This brief description of the defendant's Cost Schedules points to a crucial fact in this litigation, namely, that state-determined need varies among AFDC recipients according to their particular circumstances. Generally speaking, the state has determined that older children have a higher level of need than younger children, that males of teen age have a higher level of need than females of teen age, that families in which the responsible relatives are needy have a higher level of need than families in which the responsible relatives are not needy, and that recipients living in counties with a high cost of living have a higher level of need than recipients living in counties with a low cost of living.

Plaintiffs in this action make no quarrel with the defendant's Cost Schedule as described above, but assert that the operation of California Welfare & Institutions Code § 11450(a) is without any reasonable basis and denies them equal protection of the laws in violation of the Fourteenth Amendment. The statute places a maximum limitation on the amount of aid that a recipient may receive. Taking into account assistance provided by the United States government, § 11450(a) dictates that aid to AFDC recipients shall not exceed the amounts set forth in the accompanying table.[3]

---

3. Participation Base.

The effect of § 11450(a) is to deny to the class represented by plaintiffs assistance adequate to meet their state-determined need, while at the same time granting to all other recipients assistance equal in amount to their state-determined need.

A. Children living with one parent or other relative

| Number of Children | Amount |
|---|---|
| 1 | $148 |
| 2 | 172 |
| 3 | 221 |
| 4 | 263 |
| 5 | 300 |
| 6 | 330 |
| 7 | 355 |
| 8 | 373 |
| 9 | 386 |
| 10 | 392 |
| 11 | 399 |
| 12 | 405 |
| 13 | 412 |
| 14 | 418 |
| 15 | 424 |

B. Children living with two eligible parents

| Number of Children | Amount |
|---|---|
| 1 | $166 |
| 2 | 191 |
| 3 | 239 |
| 4 | 282 |
| 5 | 318 |
| 6 | 349 |
| 7 | 373 |
| 8 | 392 |
| 9 | 404 |
| 10 | 411 |
| 11 | 417 |
| 12 | 424 |
| 13 | 430 |
| 14 | 437 |
| 15 | 443 |

Plus $6 for each additional child.

The cases presented by the named plaintiffs are illustrative. Plaintiff Ernestine Kaiser is the unemployed mother of two teenagers, male and female, and two children of subteen age. For a family of this composition, the defendant's Cost Schedule establishes a need of $300.00. Section 11450(a), however, permits no more than $263.00 to be given monthly to four needy children living with one needy parent. Consequently, plaintiff is receiving $37.00 less than she needs, according to the state's determination.

Plaintiff Sandra Williams is the mother of a three-year old boy. Her needs consist of the usual items listed for each recipient in the Cost Schedule, and, in addition, the defendant Department of Social Welfare includes such

work expenses as transportation and child care to the extent those expenses are determined to be unmet by plaintiff Williams' salary.[4] In a decision of the Director of the Department, the combination of these needs totalled $212.00 for the month of January 1968. Under § 11450(a), however, the maximum limitation on assistance to a family of one child with a needy parent was $148.00. This amount fell $64.00 short of plaintiff Williams' needs for the month of January 1968, according to the defendant's own determination of need.

Plaintiff Helen Hood is the mother of eleven children. Her problem illustrates the severe discriminatory effect of § 11450(a) on children in large families. All of plaintiff's eleven children are eligible to receive AFDC payments. According to the defendant's Cost Schedule, the monthly need of the children amounts to $532.00. But according to § 11450(a), eleven children living with a needy relative may receive no more than $399.00 per month. Plaintiff therefore receives $133.00 less *per month* than the state considers necessary to provide clothing, food, shelter, and other needed items for her children.

For equal protection purposes, the plight of the plaintiffs is significant because it contrasts with the good fortune of those AFDC recipients whose needs as determined by the state are met because they are less than the maximum aid limitation. In other words, plaintiffs are discriminated against by § 11450(a) because (1) it imposes flat limitations on families of a given size, without taking account of variants such as age, sex, unmet work expenses

---

4. This court's acceptance of the state's determination of need for plaintiff Williams indicates no opinion concerning the extent to which the state is required by federal statute or regulation to consider any particular work-related expense, nor concerning the particular method of computation by which such expense should be considered.

and cost of living, and because (2) it drastically decreases the permissible allotment per child as family size increases.[5]

The consequence is that § 11450(a) lacks a reasonable relationship to the need of AFDC recipients because the limitations it imposes take *no account* of age, sex, unmet work expenses and cost of living, and take *no reasonable account* of family size as determinants of need. Recipients whose needs happen to fall below the line drawn by § 11450(a) are fortunate enough to get their state-determined needs met; those whose state-determined needs fall above the line do not have their state-determined needs met. Younger children, females, residents of counties with a low cost of living, and (most patently) members of small families are the fortuitous beneficiaries of this set of circumstances. Older children, males, residents of counties with a high cost of living, and members of large families tend to bear the random burden of having their needs unmet.

This irrational and arbitrary distinction among AFDC recipients violates the equal protection clause of the Fourteenth Amendment. The guarantee that "[n]o state shall . . . deny to any person within its jurisdiction the equal protection of the laws"[6] means that a state may not establish a classification that lacks any reasonable basis in light of the purpose of the program in question.[7] As the Supreme

---

5. The statutory increment of $6.00 for each child after the ninth fails by at least $13.00 to meet the state-determined need of such child *for food alone*.

6. U. S. Const. amend. XIV, § 1.

7. "The courts must reach and determine the question whether the classifications drawn in a statute are reasonable in light of its purpose . . . ." McLaughlin v. Florida, 379 U.S. 184, 191 (1964); "[A] statutory discrimination must be based on differences that are reasonably related to the purposes of the Act in which it is found." Morey v. Doud, 354 U.S. 457, 465 (1957).

Court stated in *Levy v. Louisiana*, 391 U.S. 68, 71 (1968), "a State has broad power when it comes to making classifications . . ., [but] it may not draw a line which constitutes an invidious discrimination against a particular class. . . . Though the test has been variously stated, the end result is whether the line drawn is a rational one."

The defendants have not claimed that the lines drawn by Section 11450(a) are rational. Nowhere has the state set forth a plausible explanation why the needs of one AFDC recipient are fully met while the needs of another recipient are not. If the purpose of the aid limitations is to reduce state expenditures, there are methods by which the state could accomplish that objective without discriminating among AFDC recipients. The present scheme penalizes some recipients but not others on the basis of circumstances which are beyond the control of the recipients and have no rational relationship to the purpose of the AFDC program. Section 11450(a) consequently denies to the burdened class of AFDC recipients equal protection of the laws and is therefore unconstitutional as violative of the Fourteenth Amendment to the Constitution.[8]

The decision which this court hands down today is neither unheralded nor drastic. Other three-judge courts have

---

8. The Supreme Court recently disposed of an unconstitutional resource-saving device similar to § 11450(a) with the following language:

> We recognize that a State has a valid interest in preserving the fiscal integrity of its programs. It may legitimately attempt to limit its expenditures, whether for public assistance, public education, or any other program. But a State may not accomplish such a purpose by invidious distinctions between classes of its citizens. It could not, for example, reduce expenditures for education by barring indigent children from its schools. Similarly, in the cases now before us, appellants must do more than show that denying welfare benefits to new residents saves money. The saving of welfare costs cannot be an independent ground for an invidious classification.

Shapiro v. Thompson, ..... U.S. ..... (1969).

reached a similar result. In *Williams v. Dandridge*, 297 F. Supp. 450 (D. Md. 1968), the court considered a Maryland statute setting an absolute aid limitation for all families of $250.00. No additional grant was permitted if the family contained so many children that the total state-determined need exceeded $250.00. The court held the limitation offensive under the equal protection clause. The court found unsupportable the assumption of the statute that the eighth child, for example, is either not needy or must suffer his needs to go unsatisfied. That this eighth child could enjoy full satisfaction of his needs if he moved in with a relative underscored the illogic, and possibly pernicious consequences, of the maximum limitation.

In *Westberry v. Fisher*, 297 F. Supp. 1109 (D. Me. 1969), the court considered a limiting statute which imposed gradually reduced payments for additional children up to an absolute limitation of $250.00 for all recipients in a family. The court pointed out the conflict between the state's need schedule and the limitation statute and reasoned that only by striking down the limitation could the court reach a result reconcilable with the purpose of the AFDC program to fashion assistance according to need. See also *Dews v. Henry*, Civil No. 6417 Phx. (D. Ariz., March 13, 1969).

The fact that the statutes involved in the *Williams*, *Westberry*, and *Dews* cases imposed an absolute ceiling on aid to a family, whereas § 11450(a) permits a minimum increase of $6 per child in aid paid to a family no matter what the family size, does not justify distinguishing those cases from this one, since the minimal $6 increment does not close the gap between child need as calculated by defendant Montgomery and actual aid for large family children, while children from smaller families may receive sufficient aid to cover their calculated needs.

It is important at this point to clarify sharply the extent of our holding today. We do not make any determination as to what the actual financial needs of any California AFDC child are. This is a task which we leave to the California legislature and agencies which it authorizes to make such determinations, such as defendant Montgomery's Department. Nor do we wish to intimate that if and when such need schedules are calculated, the State must furnish all AFDC children with aid covering the full extent of such calculated need.

We say only that, the state having chosen to make expenditures to promote the welfare of needy children, those expenditures may not be made in such a way as to discriminate irrationally among the recipients. The limitations imposed by § 11450(a) create the forbidden irrational discrimination among recipients and that portion of § 11450(a) is therefore unconstitutional. It is to that statute alone, and the method of disbursement which it commands, that this court has directed its attention.

For the reasons expressed above, this court is of the opinion that the conflict between California Welfare & Institutions Code § 11450(a) and the equal protection clause of the Fourteenth Amendment creates a substantial likelihood that the plaintiffs are likely to prevail. This court is also of the opinion that those AFDC recipients whose state-determined needs are not met due to the operation of § 11450(a) form a proper class for the purpose of securing injunctive relief under Fed. R. Civ. Proc. 23(a) and 23(b)(2). Further, this court is properly convened, 28 U.S.C. § 2281, and has jurisdiction of the cause, 28 U.S.C. §§1343 (3) and (4). *King v. Smith*, 392 U.S. 309 (1968).

The foregoing memorandum opinion constitutes this court's findings of fact and conclusion of law according to Fed. R. Civ. Proc. 52(a).

Therefore,

It Is Ordered that defendants Montgomery, Terzian and Born are preliminarily enjoined, pending further order of this court, from enforcing the maximum aid table in California Welfare & Institutions Code § 11450(a) and all regulations promulgated thereunder.

Dated: August 28, 1969.

.....
*United States Circuit Judge*

/s/ ALBERT C. WOLLENBERG
*United States District Judge*

ALFONSO J. ZIRPOLI
*United States District Judge*

*UNITED STATES COURT OF APPEALS*
*FOR THE NINTH CIRCUIT*

No. 49613 Civil

ERNESTINE KAISER, et al.,
*Plaintiffs,*

vs.

JOHN MONTGOMERY, et al.,
*Defendants.*

Hamlin, Circuit Judge (dissenting):

I respectfully dissent. Plaintiff contends that the California laws relating to the amount of aid to be given families with dependent children are violative of the 14th Amendment of the Constitution, which provides that no state "shall deny to any person within its jurisdiction the equal

protection of the laws." Plaintiff seeks a preliminary injunction enjoining the enforcement of section 11450(a) of the California Welfare and Institutions Code, and the regulations promulgated thereunder.

Section 11450 of the Welfare and Institutions Code of California sets out the maximum amount that shall be paid to families having needy children. This statute does not contain an absolute limitation as to the total amount that shall be paid (as do the statutes considered in the cases cited in the majority opinion). It does provide a plan whereby the amount of aid to the family increases when the number of dependent children in the family increases. It may be that such plan does not provide complete support in many cases, but I do not believe that it lacks a reasonable basis or that it arbitrarily or capriciously deprives anyone of the equal protection of the laws in violation of the United States Constitution.

The issue before us at this time is the application for a preliminary injunction. I feel such an application should be denied at this time.

## *Appendix B*

*United States District Court*
*For the Northern District of California*

Civil Action No. 49613

ERNESTINE KAISER, et al., *Plaintiffs,*

vs.

JOHN C. MONTGOMERY, et al., *Defendants.*

### AFFIDAVIT

John M. McCoy being duly sworn deposes and says:

1. I am the Chief of the Program Estimates Bureau of the State Department of Social Welfare, State of California.

2. In my capacity as such, I have estimated that the additional cost of paying full need under the current Standard of Assistance in the program providing Aid to Families with Dependent Children (Burton-Miller Act, Sections 11000 et seq., California Welfare and Institutions Code) for the months of December 1969 through June 1970, in disregard of the limitations of Section 11450(a) of that Code would be $40,764,700.

Cost sharing of this amount would be as follows:

Federal: $19,380,600
State: $14,434,300
County: $ 6,949,800

3. If the allowance for housing were to be increased above the average of $63 allowed in the current Standard of Assistance, the following cost increases would result in addition to those reflected in the foregoing paragraph:

A. A $15 increase to an average of $78: $32,361,500

| | |
|---|---|
| Federal: | $ 15,385,600 |
| State: | $ 11,458,700 |
| County: | $ 5,517,200 |
| Total: | $ 32,361,500 |

B. A $30 increase to $93: $65,660,100

| | |
|---|---|
| Federal: | $ 31,222,300 |
| State: | $ 23,245,400 |
| County: | $ 11,192,400 |
| Total: | $ 65,660,100 |

C. A $45 increase to $108: $100,728,300

| | |
|---|---|
| Federal: | $ 47,916,500 |
| State: | $ 35,647,900 |
| County: | $ 17,163,900 |
| Total: | $100,728,300 |

D. A $60 increase to $123: $136,712,600

| | |
|---|---|
| Federal: | $ 65,051,900 |
| State: | $ 48,370,800 |
| County: | $ 23,289,900 |
| Total: | $136,712,600 |

Dated this 27th day of October 1969.

/s/ JOHN M. MCCOY
*Chief, Program Estimates Bureau*
*State Department of Social Welfare*

Subscribed and sworn to before me
this 27th day of October 1969.

SELMA GAMMAGE
Selma Gammage
Notary Public
[SEAL]

FILE COPY

NOV 7

JOHN F. DAV

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1969

## No. 131

EDMUND P. DANDRIDGE, JR., CHAIRMAN OF THE MARYLAND STATE BOARD OF PUBLIC WELFARE, ET AL.,

*Appellants,*

v.

LINDA WILLIAMS, ET AL.,

*Appellees.*

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND

## BRIEF FOR THE APPELLANTS

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October 31, 1969

The Daily Record Co., Baltimore, Md. 21203

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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1969

## No. 131

EDMUND P. DANDRIDGE, JR., CHAIRMAN OF THE MARYLAND STATE BOARD OF PUBLIC WELFARE, ET AL.,
*Appellants,*

v.

LINDA WILLIAMS, ET AL.,
*Appellees.*

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND

## BRIEF FOR THE APPELLANTS

### OPINIONS BELOW

The initial opinion of the United States District Court for the District of Maryland is reprinted at A. 87, the supplemental opinion and order of the District Court, after reargument, is reprinted at A. 238. The opinions are reported at 297 F. Supp. 450.

### JURISDICTION

This suit was brought under 28 U.S.C.A. §1343(3) and 42 U.S.C.A. §1983, to enjoin enforcement of the Maryland maximum grant regulation applicable to AFDC recipients,

to declare its invalidity, and to require the State to make payments equal to "minimum subsistence and shelter needs as established by the Maryland State Board of Public Welfare". The final decree of the District Court was entered on March 18, 1969 and notice of appeal was filed in that Court on March 20, 1969. The jurisdiction of the Supreme Court to review this decision by direct appeal is conferred by 28 U.S.C.A. §1253. The following decisions sustain the jurisdiction of the Supreme Court to review the judgment on direct appeal in this case: *King v. Smith*, 392 U.S. 309; *Alabama Pub. Serv. Comm. v. Southern R. Co.*, 341 U.S. 341, 343-44 n. 3. Probable jurisdiction was noted on October 13, 1969.

## QUESTIONS PRESENTED

1. Is a state economic regulation, conceded by the District Court to be proper as applied to some situations, subject to invalidation *in toto* for "overbreadth", notwithstanding the absence of any First Amendment or similar question requiring the validity of the regulation to be judged on its face?

2. Did the District Court err in founding a judgment of invalidity upon assumptions as to the effect of the maximum grant regulation entirely unsupported by the record before it relating to these matters of "constitutional fact"?

3. Did the District Court apply the proper standard of review in invalidating, following explicit inquiry into legislative motive, a broad state regulation supportable on the basis of, and founded on, the economic principle of "less benefit"?

4. Did the District Court err in finding no rational basis for the regulation?

## STATUTES INVOLVED

The challenged regulation, Rule 200, §X,B of the Maryland Department of Social Services (formerly Rule 200, VII, 1), reads as follows:

"B. *Amount* — The amount of the grant is the resulting amount of need when resources are deducted from requirements as set forth in this Rule, subject to a maximum on each grant from each category:

1. $250 — for local departments under any 'Plan A' of Shelter Schedule
2. $240 — for local departments under any 'Plan B' of Shelter Schedule

   *Except that:*

   a. If the requirements of a child over 18 are included to enable him to complete high school or training for employment (III-C-3), the grant may exceed the maximum by the amount of such child's needs.

   b. If the resources of support is paid as a refund (VI-B-6), the grant may exceed the maximum by an amount of such refund. This makes consistent the principle that the amount from public assistance funds does not exceed the maximum.

   c. The maximum may be exceeded by the amount of an emergency grant for items not included in a regular monthly grant. (VIII)

3. A grant is subject to any limitation established because of insufficient funds."

Federal Statutes recognizing validity of state maximum grant regulations:

P.L. 90-248, §213 (b) (1967), 42 U.S.C. 602 (a) (23),

* * * * * *

"§602(a) A State plan for aid and services to needy families with children must . . . .

(23) provide that by July 1, 1969, the amounts used by the State to determine the needs of individuals will have been adjusted to reflect fully changes in living costs since such amounts were established, and *any maximums that the State imposes on the amount of aid paid to families will have been proportionately adjusted.*" (Emphasis added);

P.L. 87-543, §108 (a) (1962),

(Permitting states with maximum family grant requirements which did not otherwise limit payments to less than state-determined need, to utilize protective payments to third persons, a privilege subsequently made available to states not meeting need requirements by the 1967 amendments);

P.L. 90-248, 42 U.S.C. §1396 (b) (f) (1) (B) (ii),

"Part 2 — Medical Assistance Amendments Limitation on Federal Participation in Medical Assistance

* * * * * *

(B) (i) Except as provided in clause (ii) of this subparagraph, the applicable income limitation with respect to any family is the amount determined, in accordance with standards prescribed by the Secretary, to be equivalent to 133⅓ percent of the highest amount which would ordinarily be paid to a family of the same size without any income or resources, in the form of money payments, under the plan of the State approved under part A of title IV of this Act.

(ii) *If the Secretary finds that the operation of a uniform maximum* limits payments to families of more than one size, he may adjust the amount otherwise determined under clause (i) to take account of families of different sizes." (Emphasis added).

* * * * * *

Federal regulations recognizing validity of state maximum grant regulations:

"Interim Policy May 31, 1968

Need — Requirements
For State Public Assistance Plans
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U. S. Department of Health, Education, and Welfare
Social and Rehabilitation Service
Office of the Administrator

* * * * * *

Interim Policy

3. Requirements for State Plans:
A State plan for OAA, AFDC, AB, APTD or AABD must, as specified below:

* * * * * *

B. *Standards of Assistance:*

* * * * * *

2. Provide that by July 1, 1969, the State's standard of assistance for the AFDC program will have been adjusted to reflect fully changes in living costs since such standards were established, and *any maximums that the State imposes on* the amount of aid paid to families will have been proportionately adjusted. (Emphasis added).

* * * * * *"

Federal Register, Vol. 34, No. 19 — Wednesday, January 29, 1969

"Chapter II — Social and Rehabilitation Service (Assistance Programs), Department of Health, Education, and Welfare

Part 233 — Coverage and Conditions of Eligibility in Financial Assistance Programs

* * * * * *

§233.20 Need and amount of assistance.

(a) *Requirements for State Plans.* A State Plan for OAA, AFDC, AB, APTD or AABD must, as specified below:

* * * * * *

(2) *Standards of assistance.*

* * * * * *

(ii) In the AFDC plan, provide that by July 1, 1969, the State's standard of assistance for the AFDC program will have been adjusted to reflect fully changes in living costs since such standards were established, and *any maximums that the State imposes on the amount of aid paid to families* will have been proportionately adjusted. In such adjustment a consolidation of the standard (i.e., combining of items) may not result in a reduction in the content of the standard. In the event the State is not able to meet need in full under the adjusted standard, the State may make ratable reductions in accordance with subparagraph (3) (viii) of this paragraph. *Nevertheless, if a State maintains a system of dollar maximums, these maximums must be proportionately adjusted in relation to the updated standards.* (Emphasis added).

* * * * * *

(3) *Income and Resources*

* * * * * *

(viii) Provide that payment will be based on the determination of the amount of assistance needed and *that, if full individual payments are precluded by maximums or insufficient funds, adjustments will be made by methods applied uniformly statewide.*" (Emphasis added).

## STATEMENT

The present case involves a Maryland regulation, present in differing forms in approximately 20 other states, which establishes (subject to certain exceptions) a ceiling of approximately $250.00 per month on welfare grants under the AFDC program.

The AFDC program finds its antecedents in the Mothers' Pension Laws adopted by various states. These, in turn, derived from the discussions of the White House Conference on Children and Youth of 1909. Prior to 1909, the dominant form of public assistance in the United States, in respect to both the aged and dependent children, was "indoor" (almshouse and orphanage), as distinct from "outdoor" (money payment) relief. The references in legislative history to "aid to dependent children in their own homes" must be viewed against this background. The dominant philosophy of public assistance in the United States, until the early years of this century, was that of the British Poor Law Commission of 1835 in its almost undiluted form, with its fear of a cycle of dependency and its view that the situation of the ablebodied:

> "Shall not be made really or apparently so eligible (desirable) as the situation of the independent laborer of the lowest class * * * It is shown that in proportion as the condition of any pauper class is elevated above the condition of the independent laborers, the condition of the indepndent class is deprived; and industry is impaired, and employment becomes unsteady, and its remuneration in wages is diminished. Such persons, therefore, are under the strongest inducements to quit the less eligible class of laborers and enter the more eligible class of paupers."

Coll, *Perspectives in Public Welfare; The English Heritage*, Welfare in Review, March 1966, Volume 4, No. 3, page 1; Abbott, *From Relief to Social Security* (1941) 262-72.

Following the White House Conference of 1909, a number of states undertook to institute programs of Mothers' Pensions, usually confined to families where the absence of the father was due to his death. By 1922, forty-three states had made some statutory provisions for aid to chil-

dren in their own homes, of these 35 established monthly allowance figures by statute. In spite of the fact that grants per child were on the order of $5.00 to $20.00 per month, ten states, at that early date, saw fit to impose family maximums — ranging from $25.00 in West Virginia to $60.00 in Oregon.[1] See Eckman, *Public Aid to Children in Their Own Homes*, (U. S. Dept. of Labor, Children's Bureau, Legal Chart No. 3, 1923). In Maryland, a $40.00 maximum was imposed by Chapter 670 of the Acts of 1916, which remained part of Maryland law until enactment of Chapter 401 of the Acts of 1929, which relegated need standards to determination by county boards. By 1934, 46 states had mothers' pension programs; the majority of them imposed family maximums. See Abbott, *supra* at 276-77. In 1934, the Report of the (federal) Committee on Economic Security, adopting a recommendation of the Children's Bureau, recommended a federal ADC program. Cohen, *Factors Influencing the Content of Federal Public Welfare Legislation*, 1954 Social Welfare Forum 199, 205; 209 (1954). "[T]here was very little interest in Congress in ADC. . . . The fact that the committees of Congress limited the original Federal share to one third, placed relatively low limitations on the amount of Federal aid per child and omitted any federal sharing for the mother or adult caretaker reflected the degree of the prevailing interest in the program." The bill drafted by the Committee on Economic Security provided for a closed-end appropriation. It "recognized that there would be waiting lists in that it provided that a state would have to file an annual statement of the number of children on the waiting list to receive assistance. The bill did not define what 'assistance to children' meant." Cohen, *supra*, at 205. Congress

[1] These states included Kansas, Louisiana, Maryland, Missouri, Montana, Nebraska, Nevada, Oregon, Utah, and West Virginia.

eliminated the closed-end appropriation, but otherwise engrafted further limitations on the Committee on Economic Security bill. Thus, the federal share of matching was, at the suggestion of Congressman (later Chief Justice) Vinson, limited to $18.00 a month for the first child, and $12.00 for each additional child, regardless of actual or state-determined need. "These figures were obtained by review of the Federal pensions provided for widows and children under veterans legislation of which the Ways and Means Committee at that time had jurisdiction. But whereas the veterans schedule then provided $30.00 for two children where there was no widow and increased the amount to $46.00 where there was widow, the committee did not include any payment for the mother under ADC. It was not until 1950 — fifteen years later — that this defect was corrected." Cohen, *supra*, at 205. Further, "[t]he 'decency and health' plan requirement was deleted from the legislation, primarily due to the criticism from members of both the House and Senate Committees that this would give the Federal authority the right to set standards relating to amount of assistance." Cohen, *supra*, at 206. These limitations were recognized by this Court in *King v. Smith*, 392 U.S. 309, 334, referring to the states' "undisputed power to set the level of benefits *and* the standard of need." (Emphasis added), and in *Rosado v. Wyman* where the court recognized "the traditional federal policy of granting the states complete freedom in setting the level of benefits". 414 F. 2d 170, 179 (2d Cir. 1969) and see *Lampton v. Bonin*, 299 F. Supp. 336, 342-43 (E.D. La. 1969).

In Maryland, establishment of benefit levels following implementation of AFDC by Chapter 148 of the Acts of 1936 was initially a function of the county boards, some, at least, of which imposed maximum grant requirements. The state first set the maximum amount for grants early

in 1944 and the suggestion that the ceiling be removed was first made at the meeting of the State Board of Public Welfare on February 2, 1945 (Minutes, A. 127-28). Prior to this time, State ADC grants were limited to the federal maximum grant with some local supplementation from general assistance funds. Subsequently, commencing on July 1, 1947, in consequence of requirements imposed by federal regulations, the State imposed statewide needs standards, including a maximum grant regulation providing for a maximum grant of $170.00 per month for families of eleven or more persons (Rule, A. 113). Subsequently, protests were received from local boards.

> "Several of the local governments were finding it difficult to accept the principle of State standardization of grants even with adjustment of those standards for different areas of the State.
>
> This reluctance apparently stemmed from the interpretation by a number of local board members, county officials and citizens that the program should not be one having as a part of its purpose the lifting by money alone of the standard of living of the people receiving public assistance. The opinion was general that living on public assistance cannot be a satisfactory way of life and should not be made as attractive or profitable as earning a living.
>
> The Department's approach to the objective of its service recognizes public assistance as only a temporary arrangement for the recipient while some permanent plan for self-support is being worked out by him with the assistance of the welfare agency. Towards fully accomplishing such objective, the need is recognized for continual improvement in developing a plan which will get the social worker onto the case immediately to help the recipient wherever possible to make use of some solution other than public assistance; or to continue working on the case to see that a solution is found as soon as possible.
>
> The Department regards these as criteria for measuring the degree of efficiency in accomplishing the

objective of the service. But it is not satisfied that it has the answer to this problem in all parts of its present procedure. For example, during recent months it has been critically testing its methods in dealing with Aid to Dependent Children cases in the belief that present methods do not offer enough stimulation to the recipient to improve her circumstances.

* * * * * *

On the whole the Department appears to have weighed carefully the differences existing in areas of the State and to have made use of proper data responsibly in developing the standards adopted. Attention now is being given them towards revision where necessary. A part of this problem is to keep the public assistance grant from exceeding the earnings available to a comparable family which is self-supporting.

* * * * * *

When postwar conditions brought about an increase in the number of new cases, the State, in order not to withhold assistance from eligible applicants, withdrew from the case grants all but four essential items (food shelter, clothing and household maintenance), and placed a ceiling on the total grant allowable. This released enough funds to absorb incoming cases without creating a waiting list or creating a deficit. This policy is sound and practical in that it does not withhold assistance from anyone who can satisfy eligibility requirements strictly applied.

Ceilings are now being reexamined in the light of experience and present conditions.

Consideration of the allowances for the various items included in a public assistance grant does not indicate that it affords more than minimum subsistence. The grant allowed has not been adjusted closely to the cost of living, and moreover there are excluded at present items which are part of the customary expenditures of persons of even the lowest income group. Nevertheless, in some areas of the State the maximum grant allowable, even on the present basis, was deemed by the local authorities to be excessive for the recipient's normal pattern of living.

> The belief is widespread among county boards, and there is some evidence tending to confirm it, that meagerness of grant is serving successfully as an incentive for recipients' regaining self-support. It is felt that the recipient, once on the welfare roll, has a tendency to relax and develop the attitude that the government owes him a living, and that, furthermore, too many of the recipients fail to appreciate what they are able to obtain with so little effort.
>
> To combat such tendencies, the belief was held that for the good of Maryland as well as of the recipients, public assistance should not pamper or indulge the recipient; the aim should be to help them regain responsible control of their affairs." (*Report on the Department of Public Welfare*), (Maryland) Commission on Governmental Efficiency and Economy (1948), (A. 165, 173-74, 179, 180-81).

In consequence of these objections, the counties were classified into four groups beginning on July 1, 1948, with allowable maxima for families of eleven (11) or more ranging from $159.00 to $170.00 in the various county groups (Rule, A. 112-113). Beginning on October 1, 1948, the maximum grant prescribed was for families of ten persons or more and ranged from $165.00 to $176.00 in the various counties (Rule, A. 111-112). On February 21, 1950, the maximum grants for families of ten or more were reduced to amounts ranging from $147.00 to $159.00 (Rule, A. 108). On January 31, 1952 flat maximum grants applicable to families of all sizes were initiated, the allowable sums ranging from $145.00 to $165.00 depending on the county. Beginning in October 1952 a uniform state maximum applicable to families of all sizes of $175.00 (subsequently increased to $180.00) was imposed (Rule, A. 105-107).

In 1956 and again in 1958 the regulation underwent intensive administrative review, data being collected on the

costs of eliminating the regulation and on average weekly wages for state-insured employment, for production workers in manufacturing industry, and for farm labor, on average disposable income after taxes, and on the attitudes of county boards (Minutes and Attachments, A. 130-144). On October 1, 1958 local variations based on differing shelter costs were again authorized, the authorized grants ranging from $190.00 to $210.00 depending on the county (Rule, A. 104-105). This limit was adopted after objections by some county boards to elimination of a maximum. In a communication (A. 143-144) to county boards dated June 27, 1958, the Director of the State Department of Public Welfare noted that "(S)ince 1952 we have had one overall maximum on an assistance grant, thinking that an assistance grant should not go higher than the lower wages in the community." The former Supervisor of Plans and Standards of the State Department of Public Welfare (A. 194) recalls:

> ". . . that these maximum grant regulations consistently have received Federal approval, I also recall that one factor giving rise to these regulations was the strong feeling on the part of many county boards, particularly during the period following adoption of statewide need standards in 1944 that public assistance payments should not exceed the earnings of the head of a family when off assistance and that the income of a public assistance recipient should not exceed that of his employed neighbors.
>
> I recall that at various times during the early years following the introduction of the maximum grant regulation, the State Department of Public Welfare secured information as to wage levels from the State Employment Service and that the information thus secured was utilized in establishing maximum grant levels."

These figures were progressively increased to the $240.00-$250.00 limits now under attack.

While the State Department of Public Welfare unsuccessfully sought elimination of the maximum grant regulation in its budget requests beginning in 1967, such request were not transmitted to the Legislature in the Governor's budget (see Maryland Const., Art. III, Sec. 52) and at least one legislative committee expressed concern that even the existing maximum grant level operated as a disincentive to employment and as an incentive to desertion by wage earners;

> "In the General Public Assistance-Employable category, which as the title implies, involves those individuals who are temporarily unemployed and without resources, the cost has risen from $35,348 to $266,740 or 654.6% between 1956 and 1965. The number of families assisted under this program has increased from 40 in June of 1956 to 240 in June of 1965, an increase of 500%.
>
> During an era of the highest economic activity this country has ever known, this rate of rise in employable individuals is almost unbelievable. Even though, as the Department of Welfare pointed out, this is not a static group containing the same individuals and the fact that they have been able to attain a turnover rate of approximately 70% of the individuals in it, the Committee finds it difficult to believe that everyone in this group is actively seeking employment. Here again the welfare policy on the amount paid is believed to be partly responsible for discouraging these individuals from seeking employment.
>
> For example, a family of five would be entitled to receive the maximum grant of $237.50 per month plus free medical care and hospitalization. If the family provider were working, he would have to receive an income higher than the grant to satisfy his costs of working, i.e., transportation, clothing, lunches, etc. in addition to such fixed deductions as Social Security, City Earnings Tax, etc., which would require him to earn approximately $300.00 a month to equal his welfare payment. If, because of his lack of education or

training and experience, he cannot command more than $60.00 a week, or $260.00 a month, he is not inclined to obtain employment since he can get almost the same amount by remaining idle. If he is found to be unwilling to accept employment, the Department of Welfare can stop his public assistance payments. It is conceivable that in such instances, he would seriously consider 'deserting' his family so that they could continue to receive the maximum grant and then accept employment at whatever salary he is able to obtain thus increasing his family income substantially. At the same time, the family, as a group, are held at almost the poverty level and find it difficult to improve their lot. The father image is gone and the children, without the guidance they need, cannot be blamed for developing a resistance to established authority and becoming juvenile delinquents, thus continuing the poverty cycle." Maryland Legislative Council, *Report to the General Assembly of 1967, (Report of the Legislative Council Committee on Public Welfare Cost,* October 1966). (A. 147, 158-159).

Each and all of the approximately 20 versions of the maximum grant regulation were submitted to, and accepted for incorporation in the State Plan (e.g. A. 183-193) by the Department of Health, Education and Welfare (Stipulation, A. 213-214). Each such acceptance constituted a finding by the federal authorities that the state maximum grant regulation plan was in accord with the requirements of the Social Security Act, including 42 U.S.C.A., §602 (a) (g). See 42 U.S.C.A., §602 (b); Department of Health, Education and Welfare, *Handbook of Public Assistance Administration,* Part VII, Section 1100, pp.1-15, 57-63; cf. *King v. Smith,* 392 U.S. 309, 317, 326, 337 and nn. 11 and 23 and 45 C.F.R. §201.3 on the significance of acceptance and incorporation of regulations, and see, Dept. of Health, Education and Welfare, *Public Assistance Under The Social Security Act* (1966) at p. 11

where action on state plans and amendments is explained thusly;

> "A State wishing to obtain Federal funds for one or more of the public assistance programs submits, for each, a State plan describing the pertinent aspects of its program operations.
>
> The Bureau analyzes the State plan, determines whether it meets the requirements of the Social Security Act, and recommends approval or disapproval to the Commissioner of Welfare. Similarly, the Bureau analyzes amendments to State plans and then takes action to approve such amendments on the basis of policy statements or precedent material previously approved by the Commissioner or recommends disapproval to the Commissioner.
>
> The Bureau of Family Services representatives in the nine regional offices are responsible for review and recommended action on State plans. They have authority to act on most plan amendments, submitted by the States, that are in accord with established policy.
>
> In this process, the Bureau works with the States to clarify any questions of compliance and to improve programs. States frequently submit plan material in draft for review and comment, and thus many questions are resolved before its official submittal. Official action is taken only on material officially submitted and is based only on determination as to compliance with Federal requirements; approval may not be withheld on the basis of questioned provisions that are not in conflict with Federal requirements."

The Department of Health, Education and Welfare, beginning in 1961 and continuing annually to date, issued an annual informational release entitled *State Maximums and Other Methods of Limiting Money Payments to Recipients* (A. 120) listing maximum grant regulations in some twenty-seven states. See also Sparer, *Social Welfare Law Testing*, 12 Prac. Law. 13, 21 (1966). These compilations

indicate that the Maryland maximum is one of the highest state maximums and bears a clear relationship to the minimum wage rate;[2] the other family maximums ranging downward to the $81.00 maximum applicable until recently in Florida.

The present action was instituted on February 28, 1968. The district court denied the State's motion to dismiss in its oral order of June 25, 1968 (A. 83-87). The complaint asserted the invalidity of the regulation under Article 88A, Sections 44A and 49 of the Maryland Code as well as under the Federal Constitution and Social Security Act. Notwithstanding this fact, the district court denied the State's Motion to Dismiss on the basis of the doctrine of equitable abstention.[3] Clearly, a decision that the uncon-

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[2] As at February 25, 1969, the date of the supplemental opinion of the court below, the weekly minimum wage (based on a 40 hour week) was $52-64 under the federal law (29 U.S.C.A. §206) and $46-52 under the state law (Md. Code Ann. Art. 100, §83). At the date of the court's initial opinion, the federal minimum wage was $46-64 and the state minimum wage $46. Welfare payments are of course tax-free. See 1938-2 Cum. Bull. 136; 1957-1 Cum. Bull. 26; Md. Code Ann. Art. 81, §280. In addition, recipients are generally eligible for medical assistance and other forms of assistance in kind, such as low-cost public housing and the food stamps received by the plaintiff Williams (Stipulation, A. 71).

[3] The doctrine of abstention is properly raised by a Motion to Dismiss. *Government & Civic Employees Organizing Committee v. Windsor*, 353 U.S. 364 (1957); *Shipman v. Du Pre*, 339 U.S. 321 (1950), compare *Steinbach v. Mo Hock Ke Lok Po*, 336 U.S. 368 (1949). Similarly, the state's motion to dismiss on Eleventh Amendment grounds was denied, notwithstanding the fact that the suit was only in form a suit for negative injunctive relief. As recognized in *Rosado v. Wyman, supra:*

> ". . . whatever the technical consequences of enjoining enforcement . . . may be, the practical effect of an injunction is to order the New York legislature to appropriate more funds for welfare.
>
> A federal court should not assert such power over a state legislature unless there is no possible alternative . . ."

414 F. 2d at 176. Compare *Great Northern Life Ins. Co. v. Read*, 322 U.S. 47, 51-52 (1944); *Hawaii v. Gordon*, 373 U.S. 57 (1963).

strued Maryland statutes barred the regulation would have avoided the grave constitutional question, rendering abstention appropriate in favor of state judicial remedies under the doctrine of *Harrison v. N.A.A.C.P.*, 360 U.S. 127 and *Zwickler v. Koontz*, 389 U.S. 241. Abstention was nevertheless denied, notwithstanding the inapplicability of *Damico v. California*, 389 U.S. 416 and *King v. Smith*, *supra*, which related only to abstention in favor of state *administrative*, not judicial, remedies. See *Boone v. Wyman*, 295 F. Supp. 1143, 1151 (S.D. N. Y. 1969).

On December 13, 1968, the district court rendered its initial decision (A. 87) invalidating the regulation under both the Equal Protection Clause and Section 402 (a) (9) of the Social Security Act. On December 23, 1968, the Defendants filed a motion for reargument, etc. (A. 100), under Fed. R. Civ. P. 52 and 59; on February 25, 1969 a supplemental opinion (A. 238) was filed in which the district court retracted its finding of invalidity under the Social Security Act and found the regulation void under the Equal Protection Clause only for "overbreadth" (Supplemental Opinion, A. 253-256). In retracting with some reluctance its finding of invalidity under the Social Security Act, the court relied upon the implied recognition of maximum grant regulations in Section 402 (a) (23) of the Social Security Act (42 U.S.C.A. §602 (a) (23), added by Section 213 (b) of Public Law 90-248. The district court referred to this amendment as "inexplicable". (Supplemental Opinion, A. 246). But apart from the fact that, as already noted, Congress had on several previous occasions expressly recognized state maximum grant regulations (see e.g. Cohen and Ball, *The Public Welfare Amendments of 1962*, 20 Public Welfare 191, at 229-30 (1962), (A. 218-219), and apart from the fact that 42 U.S.C.A. §602 (a) (9) on which the court originally

relied for a conclusion of invalidity had the very limited purpose of eliminating state waiting lists,[4] it is clear that §602 (a) (23) is not an "inexplicable" sport in the law. Section 602 (a) (23) resulted from an effort on the part of the then administration to secure enactment of a provision which *would* have invalidated state maximum grant regulations, as well as fraction-of-need regulations, by requiring all states to fully meet state-determined need and to adjust payments upward to reflect increases in the cost of living. See *President's Proposals for Revision in the Social Security System*, Hearings before the Committee on Ways and Means, House of Representatives, 90th Congress, 1st Session, part 1, pages 6, 59-60 (1967) (A. 219, 227-231); Committee on Ways and Means, *Section-by-Section Analysis * * * of H.R. 5710 * * * prepared and furnished by the Department of Health, Education and Welfare*, 118 (1967) (A. 234). Rather than adopting this proposal, Congress confined itself to accepting that portion of it relating to cost-of-living increases in existing maximum grant levels and declined to require the states to otherwise fully meet state-determined need.

In interpreting Section 602 (a) (23) the Second Circuit found in part

> "We believe that Section 602 (a) (23) was not intended to have anything like this broad a scope. We read it as making two far less dramatic changes in the law. First, it requires each state to make an adjustment in its standard of need by July 1, 1969, to reflect changes in the cost of living, but does not require any state to pay its standard of need, nor to increase its AFDC payments or to refrain from decreasing them. The second change required by the statute was not

[4] See Cohen, *Factors Influencing the Content of Federal Public Welfare Legislation*, 1954 Social Welfare Forum 199, 205, 209 (A. 216-217), and see 1950 U.S. Cong. & Adm. News, 3470-71, 3507 (House Committee report on §602 (a) (9)) and 95 Congressional Record 13934 (1949) (Remarks of Representative Forand).

intended to affect New York at all. It refers to a practice employed in many states, not including New York, of imposing a maximum on the amount of aid a family may receive, regardless of its size. The statute requires that family maximums of the type imposed by these states are to be adjusted by July 1, 1969, to reflect changes in the cost of living.

Our construction of Section 602 (a) (23) finds support in the rejection by Congress of the much more stringent bill originally proposed. That rejection demonstrated an intent not to impose controls on the levels of benefits set by the states. The Congressional action was entirely consistent with the traditional federal policy of granting the states complete freedom in setting the level of benefits. See *King v. Smith*, *supra*, 392 U.S. at 318-19, 334.

The Conference Report on Section 213 of the bill, which contained the version of Section 602 (a) (23) that was enacted, indicates the correctness of a narrow interpretation. In discussing the portion of the pre-Conference version of Section 213 that dealt with certain non-AFDC recipients, the Report states that the Section would have required 'each state to adjust its standards for determining need, the extent of its aid or assistance, and the maximum amount of the aid or assistance payable,' and thus mandated an increase in aid. However, in explaining the portion of Section 213 that, except for a change from an annual cost of living adjustment to a single such adjustment, became Section 602 (a) (23), the Report states only that the bill would require each state to 'adjust its standards so as to reflect current living costs and make proportionate adjustments in any maximums on the amount of aid.' Conf. Rep. No. 1030, 90th Cong., 1st Sess. (1967), reprinted in (1967) U.S. Code Cong. and Admin. News 3179, 3208-09. * * *" *Rosado v. Wyman*, 414 F. 2d 170, 178-179 (1969).

It is hard to see how Congress could have said more clearly that it regarded maximum grant regulations as permissible under the Social Security Act. Appellees reliance on the preamble and general purpose of the 1935 Act is clearly

misplaced, "... we must consider the Social Security Act as it exists today, not as it was written thirty-four years ago." *Lampton v. Bonin*, 299 F. Supp. 336, 340 (E.D. La. 1969). The challenged regulation, with its foundation in the principle of less benefit, is fully in accord with the thrust of the AFDC provisions as amended in 1967. The Administrator of the Social and Rehabilitation Service of HEW has stated that "more explicitly than ever before, this legislation [the 1967 Amendments] constitutes a national commitment to the concept that children are better off growing up in a home where work and wages are the principal source of the family's support" Switzer, "The New Social and Rehabilitation Service", Public Welfare, Volume 26, No. 1, January 1968, pages 17, 19. By reason of the district court's failure to abstain and the clear validity of the regulation under the Social Security Act, this Court is now squarely confronted with the issues under the Equal Protection Clause.

## ARGUMENT

### I.

### A STATE REGULATION IS NOT SUBJECT TO INVALIDATION *IN TOTO* FOR "OVERBREADTH" UNLESS A FIRST AMENDMENT OR SIMILAR QUESTION REQUIRES DETERMINATION OF THE VALIDITY OF THE REGULATION ON ITS FACE.

As previously noted, approximately twenty states have maximum grant regulations similar to the Maryland regulation. Until the decision in the instant case, the validity of such regulations under the federal constitution and statutes had been generally assumed.[5] Since the decision,

[5] The 4-3 decision of the Supreme Court of Iowa in *Collins v. State Board of Social Welfare*, 248 Iowa 369, 81 N.W. 2d 4 (1957) invalidating a regulation under the equal protection clause of the Iowa constitution does not supply authority to the contrary. The standards applied by the Iowa court in reviewing state economic legislation are far more stringent than those applied by this court. See e.g., *Bulova Watch Co. v. Robinson Wholesale Co.*, 252 Iowa 740, 108 N.W. 2d 365 (1961).

federal courts in Arizona (*Dews v. Henry* and *Inclan v. Dept. of Public Works*, 297 F. Supp. 587), (D. Ariz. 1969), California (*Kaiser, et al. v. Montgomery, et al.*, No. 49613, N.D. Calif., decided August 28, 1969), Maine (*Westberry v. Fisher*, 297 F. Supp.1109, (D. Me., 1969) and Washington (*Lindsey, et al. v. Smith, et al.*, No. 7636, W.D. Wash., decided August 20, 1969) have invalidated state maximum grant regulations in reliance on the instant case. In those cases, unlike this one, the sole ground urged in support of the regulations by the State Attorneys General was their character as fund-savings measures. Litigation attacking state maximum grant regulations is pending in the District of Columbia, Georgia, Louisiana, Mississippi, Texas and West Virginia, among other jurisdictions. The estimated cost to the State of Maryland of removal of the maximum grant regulation (assuming no proportionate reduction of other grants such as that carried out in Florida, see 16 Welfare Law Bulletin 4 (1969)) is on the order of $1,440,000 per year (Affidavit in Support of Application for Stay). Even larger amounts are involved in other states, and the sums involved will be drawn almost entirely from state funds, since the existing federal matching grants are already paid with respect to each child in the family regardless of state limitations on aid to large families. (See 42 U.S.C.A. §603 (Testimony of Thomas Schmidt A. 79-81)).

In the event an appropriation by the legislature is not forthcoming or surplus funds are not available from the present welfare budget, implementation of the decision of the court below would require a uniform reduction in welfare payments to the entire class of welfare recipients generally, some 140,000 persons, including the aged, blind, disabled, etc. (exclusive of foster care recipients), in an amount approximating 4% of each grant (Affidavit in Support of Application for Stay).

The court below, while recognizing the rationality of maximum grant regulations affecting employable persons (Supplemental Opinion, A. 255) found the regulation in its entirety invalid for "overreaching". It thus gave the named plaintiffs, whose situation was highly exceptional,[6] standing to attack the regulation "on its face". The court below also seriously misstated the proportion of AFDC recipients who were potentially employable, equating employability with the AFDC-U category. (Supplemental Opinion, A. 254). Compare Warren and Berkowitz, *The Employability of AFDC Mothers and Fathers*, Welfare in Review (July-Aug. 1969) at p. 1. The court below cited the Senate Report (No. 744, 90th Congress, 1st Session) on the 1967 work incentive amendment as embodying a congressional judgment that mothers of pre-school children, and mothers generally, were not eligible for referral under work incentive programs (A. 255, n. 14). But the Senate's judgment was rejected in conference and in the final bill. "The conference agreement contains the provisions of the Senate amendment, with amendments * * * (3) eliminating mothers and other relatives who care for pre-school children or children under 16 attending school from the specified classes of persons for whom referral under the program is declared to be inappropriate." Conference Re-

[6] The Williams parents were a disabled mother and an absent father; the Gary parents were both disabled. The typical AFDC situations — an ablebodied mother and absent or disabled father, were conspicuously unrepresented, and the court below, in "vetoing" the regulation *in toto*, made no inquiry into the dimensions of the class represented, noting only that its "substantiality . . . is not disclosed" (Supplemental Opinion, A. 256). Nothing in this Court's first amendment cases or in Rule 23 justifies this approach to state economic legislation. It is clear that Appellees, at the very most, have made out a case for a declaratory judgment limited to themselves or the aforementioned exceptional subclass of cases where both parents are dead, absent and/or incapacitated. See Fed. Rule Civ. P. 23 (a) (3) and 23 (c) (4) (B).

port No. 1030, 90th Congress, 1st Session, 2 U.S. Code Cong. & Adm. News 3204 (1967). A justification for the amendment to the Senate's amendment was well stated by Dr. Genevieve W. Carter of HEW's Social and Rehabilitation Service.

"* * *.

*In 20 States representing about 25 percent of the national AFDC caseload, the amount of assistance a family may receive is limited by setting maximum payments substantially below the family's need* or by meeting only a percentage of the family's deficit determined by the State's budgetary standards.

*In these States there is in effect, a work incentive because income from employment may be used to supplement the assistance payment and to make up the difference between the maximum AFDC monthly payment and the family's total requirements, as defined by the State.*

* * * * * *

*Data from the 1961 characteristics study showed that more AFDC mothers were employed in the States with employment incentives than in States that did not permit earnings to supplement the AFDC payment.* To illustrate, the national average of all AFDC mothers employed full-or part-time during the survey month of November or December was 14 percent. In States where limited payments resulted in earnings exemptions, the median proportion of mothers employed was 22 percent (Florida had a high of 44 percent). In only six of the 25 States allowing an earnings exemption was the proportion of mothers employed below the national average. In contrast, among the States not having this kind of payment limitation, and therefore no earnings incentive, the highest proportion of mothers employed was 13 percent and the median percentage for these States was about 6 percent.

As long as the job opportunities open to these mothers are a part of the irregular economy, episodes

of dependency can be expected to occur just as episodes of illness among aged persons can be expected to reoccur in the Medicare program. The objectives of an employment support program would be to reduce the frequency and duration of these episodes in recognition of the interplay between AFDC programs and the irregular job market. (Emphasis added.)

* * * * * *"

Carter, *The Employment Potential of AFDC Mothers*, 6 Welfare in Review No. 4, 1, 8-9 (1968).[7]

Decisions of this court make clear that state economic legislation, unlike legislation involving first amendment rights, is not subject to attack "on its face". See *Shelton v. Tucker*, 364 U.S. 479, 488 n. 8 and authorities there cited, and cf. *Louisiana v. N.A.A.C.P.*, 366 U.S. 293, 296-97; *N.A.A.C.P. v. Alabama*, 377 U.S. 288, 307-08 on the First Amendment basis of the "void for overbreadth" rule. See generally, Comment, *Judicial Rewriting of Overbroad Statutes*, 57 Calif. L. Rev. 240-241 (1969), where it is noted:

"The concept of overbreadth is a relative newcomer to the corpus of constitutional law. As first enunciated in the United States Supreme Court decision of *Brown v. Louisiana* (383 U.S. 131 (1966)), and further developed in such decisions as *Elfbrandt v. Russell* (384 U.S. 11 (1966)) and *United States v. Robel* (389 U.S. 258 (1967)), the doctrine was meant to apply only in the limited area of first amendment adjudication. It constituted nothing more than the Court's recognition that when the terms of a statute affecting first amendment rights sweep so broadly as to proscribe not only unprotected, but also constitutionally

[7] Under the President's new welfare proposals only the welfare mother of *pre-school age* children does not face benefit reductions if she chooses not to work, but job training, jobs and day-care centers should be made available for those who can, and wish to work. President's Message on Welfare Reform 8 U.S. Code Cong. & Adm. News 1233, 1237 (Sept. 20, 1969).

> protected conduct, such a statute is incompatible with our tradition of uncompromising deference to these 'preferred' freedoms."

Nor are there any "rights under federal law to any particular level of AFDC payments or, indeed, to any payments at all. See *New York v. Galamison*, 342 F. 2d 255 (2d Cir.), cert. denied, 380 U.S. 977 (1965); *Bradford Audio Corp. v. Pious*, 392 F. 2d 67 (2d Cir. 1968)." *Rosado v. Wyman*, 414 F. 2d 170, 177-78 (2d Cir. 1969). It is plain that the maximum grant regulation cannot be deemed invalid even as applied to the named plaintiffs. See *Purity Extract Co. v. Lynch*, 226 U.S. 192, 204; *Queenside Hills Realty Co. v. Saxl*, 328 U.S. 80, 83, *Lindsley v. Natural Carbonic Gas Co.*, 220 U.S. 61 (1911). The trial court plainly erred in rejecting, without discussion, the objection to a broad decree raised by defendants on reargument.

## II.

### THE ASSUMPTIONS AS TO THE EFFECT OF THE MAXIMUM GRANT REGULATION, UPON WHICH THE DISTRICT COURT BASED ITS FINDING OF INVALIDITY, ARE ENTIRELY UNSUPPORTED BY THE RECORD.

The court below referred repeatedly to the supposed effects of the maximum grant regulation, which was said to be "uniformly applied * * * to encourage the disbanding of large families" (Supplemental Opinion, A. 251), to have "pernicious results" (Supplemental Opinion, A. 251), and to "subvert the statutory goal of preserving intact the family unit" (Supplemental Opinion, A. 254). Similar charges might of course be levelled at the state practices expressly authorized by 42 U.S.C.A. §604 (b), permitting the states to terminate AFDC assistance to children in unsuitable homes if, as here, state welfare programs make available payments to the child in a foster home or elsewhere. *King v. Smith*, 392 U.S. at 324. But both the record

and the published social science literature appear utterly bare of evidence that maximum grant regulations have in fact resulted in family disintegration in consequence of the banishing of children of large families from the home in order that they may secure added benefits in foster homes or the homes of other relatives. Rather it is a fair inference that in the vast majority of cases, including, as stipulated, the appellees' own cases, the children of large families remain in the home, supported, perhaps, less adequately then they otherwise might be, but in the home nonetheless. The court's finding of factual subversion of family relationships on the basis of a syllogism drawn from the statutory framework is reminiscent of the judicial techniques used in invalidation of much early social legislation. Nothing in the record in this case warrants the court in indulging the presumptoin that the total effect of the regulation is to impair family relationships. Indulgence of such a presumption is inappropriate in cases of this kind.

> "Many case have been, and perhaps will continue to be, decided upon the theory that constitutional facts are adequately revealed by judicial notice or even by judicial assumption. One cause for this attitude may be that, however sharp it is drawn to clarify discussion, the borderline between constitutional facts and law is usually vague and indefinite. Another factor is the inevitable cast of the individual mind, leading some jurists to defend such abstract concepts as 'liberty of contract' by a priori reasoning. And the habit of mind induced by freely manipulating questions of fact as if they were questions of law is not an easy one to overcome. But the trend is toward distinction."

Comment, *The Presentation of Facts Underlying The Constitutionality of Statutes,* 49 Harv. L. Rev. 631, 638-39 (1936), and see Laski, *Judicial Review of Social Policy in England,* 39 Harv. L. Rev. 832, 842 ff. (1926). While the

published literature contains no evidence that exiling of children and consequent family disintegration is an effect of maximum grant regulations, there is a substantial body of literature and contemporary discussion dealing with the phenomenon of "welfare desertion"[8] which points to a precisely opposite conclusion — that in jurisdictions with high benefit levels not imposing maximums, the availability of AFDC payments in excess of wage levels to broken but not intact families has operated as an inducement to employed fathers to desert their families in order to render them eligible for benefits in excess of the wage rate. Thus, a leading text on social security, Burns, *Social Security and Public Policy* (1956), observes:

> "Many people still tend to envisage ADC as a program for widowed mothers. But with the expansion of OASI an ever larger proportion of survivor families is provided for on OASI and the proportion of ADC families in which the father has left the home has steadily increased . . . In about half of the cases the need of the child was due to the fact that the father had deserted the mother, was not married to her, or was otherwise absent from the family . . . Especially in communities where the ADC are relatively generous, this has given rise to the charge that the program makes desertion all too easy for fathers in whom the sense of family responsibility is weak, for they well know that their family will nonetheless be taken care of." *Id.* at 86.

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[8] The district court's treatment of the welfare desertion problem is found at A. 253-254: "A parent who is willing to desert to give his children or his family eligibility for AFDC on this basis can hardly be presumed to voice stringent objection to further breakup of the family unit to gain advantage from this unusual aspect of the maximum grant regulation. Thus, the maximum grant regulation not only subverts the statutory goal of preserving intact the family unit, but it is also ineffective to discourage eligibility by continued absence from the home." This would not seem in fact or logic a sufficient answer to the state's position that removal of the maximum grant would operate as an incentive to desertion.

The Burns treatise also notes that:

> "It is even possible that a parent who took very seriously his financial obligations to his family might find that if he is in a low-paid occupation, has a large family, and lives in a community paying relatively generous ADC allowances, he could secure a higher standard for his family by deserting than by remaining at home on his job." *Id.* at 87 n. 16.

Resort to sociological treatises is not necessary in search of evidence demonstrating the existence of "welfare desertion," daily newspapers are replete with such evidence. Thus a local government official has sought new or improved welfare programs which will "encourage men to stay on the job, not to drift away and abandon their family" New York Times, Feb. 24, 1969, 40:4; The N. Y. Human Resources Administrator has proposed of a joint federal-state study to determine the extent to which low-income fathers abandon their families to get extra income from welfare, there being "no question (that) this is a problem" New York Times, Mar. 20, 1969, 48:1; and the chairman of the President's Commission on Income Maintenance Programs, has condemned " 'the anomalous and inequitable situation in which families with dependent children, where a male head has deserted may receive more total income than intact poor families headed by fully employed workers ineligible for income supplements' " New York Times, Mar. 21, 1969, 44:2. Indeed, it is well known that the "absent-parent" category makes up the lion's share of AFDC cases; and is the fastest growing AFDC category. In appraising the effects of welfare regulations on family solidarity, the state was surely entitled to address itself to the most pressing evil. Cf. *Williamson v. Lee Optical Co.*, 348 U.S. 483, 489 (1955); *McDonald v. Bd. of Election Commrs.*, 89 S. Ct. 1404, 1409 (1969).

## III.

### THE PROPER STANDARD OF REVIEW TO WHICH THE REGULATION MUST BE SUBJECTED IS WHETHER IT STANDS ON SOME RATIONAL BASIS.

This Court has recognized "a state purpose to encourage employment" as an "admittedly permissible" state objective in the design of welfare programs. *Shapiro v. Thompson*, 89 S. Ct. 1322, 1331, 1333 (1969). Under the *Shapiro* rule, since the classification here does not touch on any independent fundamental right, such as that of interstate movement, the traditional standard of whether the regulation is "without any reasonable basis" (*Shapiro v. Thompson, supra* at 1333 n. 20; *Lindsley v. Natural Carbonic Gas Co.*, 220 U.S. 61, 78 (1911), see also *Flemming v. Nestor*, 363 U.S. 603 (1960); *Snell v. Wyman*, 281 F. Supp. 853 (S.D. N.Y. 1968), affd. 89 S. Ct. 533 (1969)) is applicable. The elaborate "psychoanalysis" of the legislative body carried out by the district court (Supplemental Opinion, A. 252-253, Initial Opinion, A. 97-98) is inappropriate under this standard, see *United States v. Constantine*, 296 U.S. 287, 298-99 (1935) (Cardozo, J.), since "(l)egislatures are presumed to have acted constitutionally even if source materials normally resorted to for ascertaining their grounds for action are otherwise silent, and their statutory classifications will be set aside only if no grounds can be conceived to justify them". *McDonald, supra*, 89 S. Ct. at 1408 and see *Snell v. Wyman, supra*, in which Judge Frankel in considering the involved and somewhat irrational repayment provisions of the New York Welfare Law said:

> "We sketch these countervailing points for the single purpose of indicating what seems plain to us — that we could hold the statutes unconstitutional only if we were invested by the 'convenient vagueness' of the Due Process Clause with a power, long since denied us, to invalidate state laws 'because they may be unwise, improvident, or out of harmony with a par-

ticular school of thought'. *Williamson v. Lee Optical Co.*, 348 U.S. 483, 488, 75 S. Ct. 461, 464, 99 L. Ed. 563 (1955); (Citations omitted).

To be sure, cases like those just cited reflect mainly the recognition of our highest Court during the last thirty years or so that it does not sit as final arbiter of state social policies affecting matters of business and industrial regulation. (Citations omitted).

And, it is said, the subject of welfare administration, where the primitive needs of desperate people are at stake, is altogether different. There is a difference, certainly, but not a constitutional one — not any that commissions us to tell those the people elect how they should resolve competing values of the kind here is question." (281 F. Supp. at 862-63).

* * * * * *

"Like the life of the law generally, the Fourteenth Amendment was not designed as an exercise in logic. It is ancient learning by now that a classification meets the equal protection test 'if it is practical, and is not reviewable unless palpably arbitrary'. *Orient Insurance Co. v. Daggs*, 172 U.S. 557, 562, 19 S. Ct. 281, 282, 43 L. Ed. 552 (1869). If the classification has 'some reasonable basis', it cannot be held offensive to the Equal Protection Clause 'because it is not made with mathematical nicety or because in practice it results in some inequality'. *Lindsley v. Natural Carbonic Gas Co.*, 220 U.S. 61, 78, 31 S. Ct. 337, 340, 55 L. Ed. 369 (1911). 'The problems of government are practical ones and may justify, if they do not require, rough accommodations — illogical, it may be, and unscientific'. *Metropolis Theatre Co. v. City of Chicago*, 228 U.S. 61, 69-70, 33 S. Ct. 441, 443, 57 L. Ed. 730 (1913).

"Measured against such familiar teachings, plaintiffs' arguments verge upon (or reach) the frivolous . . ." (281 F. Supp. at 865-66).

* * * * * *

The rules by which the maximum grant regulation is to be tested are:

> "1. The equal protection clause of the 14th Amendment does not take from the state the power to classify in the adoption of police laws, but admits of the exercise of a wide scope of discretion in that regard, and avoids what is done only when it is without any reasonable basis, and therefore is purely arbitrary. 2. A classification having some reasonable basis does not offend against that clause merely because it is not made with mathematical nicety, or because in practice it results in some inequality. 3. When the classification in such a law is called in question, if any state of facts reasonably can be conceived that would sustain it, the existence of that state of facts at the time the law was enacted must be assumed. 4. One who assails the classification in such a law must carry the burden of showing that it does not rest upon any reasonable basis, but is essentially arbitrary. (Citations omitted". *Lindsley v. Natural Carbonic Gas Co.*, 220 U.S. 61, 78-79 (1911).

Clearly, plaintiffs below did not "carry the burden of showing that (the regulation) does not rest upon any reasonable basis but is essentially arbitrary," cf. *McDonald v. Bd. of Election Commrs., supra; Morey v. Doud*, 354 U.S. 457 (1957); and see *Lampton v. Bonin*, 299 F. Supp. 336, 342 (1969).

## IV.

### THERE ARE AT LEAST FOUR RATIONAL BASES UPON WHICH THE MAXIMUM GRANT REGULATION STANDS.

The state was entitled, in the interest of providing work incentives and avoiding the provision of disincentives, to enforce a maximum grant requirement related to the minimum wage rate. It is clear that maximum grant regulations do provide an incentive to employment not present in states not imposing maximums by allowing recipients to retain earnings in excess of the grant, and that the effect of such regulations is to decrease tenure on the welfare rolls. See Schorr, *Explorations in Social Policy* (1968) at

29, comparing the experience in maximum-grant and non-maximum grant states, and Carter, *The Employment Potential of AFDC Mothers, supra* which suggests that experience under maximum grant regulations provided part of the inspiration for the 1967 work incentive amendments to the Social Security Act. Burns, *Social Security and Public Policy* (1956), makes clear that the "principle of less benefit" continues to supply a major influence over the setting of benefit levels in welfare programs. The Burns treatise points out that the ordinary incentives to employment are not fully operative with respect to certain groups "most vulnerable to the temptation to prefer benefit to work, namely, young workers who have not yet established regular work habits, married women, and casual or intermittent workers" (p. 62). It is further observed that "young workers who have not yet acquired regular work habits are a case in point. Studies of abuses of unemployment and disability insurance systems have revealed that women, especially married women, as a group often present this same general problem" (p. 57). Burns refers in this connection to a study by the newly-appointed Secretary of Labor George P. Shultz, "The Dynamics of A Labor Market" (1951), Chapter 6, which "found that most of the people drawing benefits and not looking for work were married women who wished to attend to family responsibilities". It is a major purpose of the 1967 amendments to the Social Security Act to induce precisely this group to seek employment. See also Hausman, *The 100% Welfare Tax Rate: Its Incidence and Effects* (1967); Durbin, *The Labor Market for Poor People in New York City* (1968). Thus during the much publicized discussion on the new administration's welfare proposals, Arthur Burns, then counselor to the President on domestic affairs and since nominated as Chairman of the Federal Reserve Board, stated:

"In some Southern States, the welfare payment is clearly insufficient to support a needy family.

On the other hand, there are other States in which the welfare payments going to a family are larger than what an unskilled man working at or close to the minimum wage can earn. This stimulates some people to leave work and join the welfare population. And many who continue working are unhappy and becoming bitter. They do not see why they should be taxed to support idlers.

* * * * * *

When you have a family where the father is working and the family income is less than that of another family which is living on welfare, we have a troublesome social problem. To handle it, *serious thought needs to be given, first, to setting a maximum on welfare payments so that welfare is not too attractive financially* and, second, to devising ways of supplementing the income of the honest and diligent working poor." (Emphasis added). U. S. News & World Report, "Interview with Arthur Burns," July 14, 1969 at 63, 64.

The application of a maximum grant regulation was rational to avoid disincentives to employment on the part of families with employable members (including women eligible for work incentive referral under the 1967 amendments) and was also rational in its application to families with unemployed or disabled members, for whom benefit levels under state workmen's compensation and unemployment compensation laws have traditionally been set at a fraction of earnings in order to avoid disincentives arising from imperfect administration of eligibility requirements. As already noted, the regulaton is rational in relation to the "absent parent" category, the other large category remaining in AFDC after recent expansions of OASDI assistance, and it is also the most rational way of allocating limited state funds so as to fully meet the needs of the largest possible number of families. The AFDC

program nationally has been criticized for encouraging desertion and for its "welfare tax" features discouraging employment by recipients; the State was entitled to consider that elimination of the maximum would exacerbate both these defects. The rationality of the regulation as a whole, and as to the overwhelming number of situations to which it was to be applied, is apparent, and the legislative authorities "(were) not bound to resort to a discrimination * * * which * * * would facilitate subterfuges and frauds and fetter the enforcement of the law. A contrary conclusion, logically pressed, would save the nominal power while preventing its effective exercise." *Purity Extract Co. v. Lynch,* 226 U.S. 192. It is to be noted that even many of the most ardent proponents of expanded social welfare benefits frequently state that the complete displacement of the indirect incentives provided by economic want will necessarily give rise to demands for more direct methods of social control in the form of detailed regulation of the conduct of beneficiaries or government conscription and compulsion of labor. Thus the noted British Historian, Edward Hallett Carr has written in Carr, "From Economic Whip to Welfare State," *The New Society* (1951), pp. 59-60;

> "The attitude of the new society to work is perhaps the most crucial issue which it has yet to face, since the fate of every society depends in the long run on the productivity of its workers. Whatever may be true of the political rights of man, the economic rights of man are meaningless and valueless without the acceptance of correlative economic obligations. A society which undertakes to ensure freedom from want to its members must be able to count on keeping up a level of organized production sufficient to meet their basic needs. Yet on no issue is the transition from the conceptions of the old society to those of the new marked by more hopeless confusion. The *laissez-faire* view of wages as the price of labour has long been

> tempered by the principle of a minimum wage adjusted to need, by family allowances and by social insurance; differences of remuneration originally designed to provide an incentive for the most intelligent and most industrious have been increasingly ironed out by the incidence of a highly progressive income tax; and the whole structure has now been overlaid by the structure of the welfare state in flat contradiction with the original design of the edifice. And this fog of confusion about positive incentives is made thicker by almost total reluctance to face the necessity of some form of sanction for a direction of labour to take the place of the discarded — rightly and necessarily discarded — economic whip . . ."

Compare the Swedish sociologist Alva Myrdal's remarks relating to the possible result of increased family allowances,

> "Looking at the problem not only from the social but also from the individual angle, it is immediately evident that cash subsidies would become merged in the average family budget without special regard for children. Increasing that budget by adding cash amounts to it monthly will only enlarge the funds available by a certain percentage, probably to be so distributed as to constitute small additions to the various budget items. The money may be added to the rent but perhaps only in order to get a larger living room. It may buy somewhat better food, but all will eat it. It may even go toward the mother's hat or the father's liquor account. Part of it will be used for more movies and magazines. To keep it apart for the children and to reserve it for the intended consumption improvement would be simply unmanageable except through obnoxious police control."[9] Myrdal, *Nation and Family* (1945), 142.

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[9] The tendency toward such "police controls" in the face of rising welfare costs is illustrated by the successive impairments of the "cash benefit" principle represented by the "protective payment" provisions of the 1962 and 1967 Social Security Amendments (P.L. 87-543, §108 (a); P.L. 90-248, §207 (42 U.S.C.A. §604 (b)).

Maryland was entitled to act on the belief, in designing its welfare program, that some measure of *laissez faire*, with all its cruelties and anomalies, was preferable to the political and economic problems and curtailments of freedom which might follow in the train of the government direction of labor possible if the principle of less benefit was totally dispensed with in the design of welfare programs. The state was entitled to believe that the use of administrative means to encourage employment was a greater evil than the limitations imposed by the maximum grant regulation, that such means would be less effective, see Carter, *supra*, at 8-9; Schorr, *supra*, at 29, and that there was no less restrictive alternative to that regulation. Compare Comment, *Compulsory Work for Welfare Recipients under the Social Security Amendments of 1967*, 4 Colum., J. L. & Soc. Prob. 197 (1968), criticizing the administrative methods of control provided by the 1967 Social Security amendments as a form of involuntary servitude. Moreover, the regulation is independently sustainable on at least three other grounds:

(1) As a means of maintaining an equity between welfare and wage earning families[10] necessary to insure public support for welfare programs. As recognized by Steiner, even

> "Retention of earned income as an incentive represents more of a political problem than its proponents acknowledge. Even in the insurance side of social security, where the claimant is encouraged to believe that he has a vested right to benefits related to contributions, a charge against benefits is made after a stipulated amount of earned income is reached. Only after age 72 may social security recipients have un-

[10] Maryland, like the federal government and unlike some states, such as New York, has no state general assistance program of wage supplements. The federal administration has recently proposed such a program. See note 7 *supra*.

> limited earnings without loss of benefits. As long as some social insurance benefits are forfeited by earned income, it is fanciful to suppose that politicians will allow public assistance benefits to go on without regard to income. The current exception of a significant amount of earned income in the case of the blind program is traceable to the overt, extreme, physical *quid pro quo* for relief that blindness offers. The recent, small, breakthrough in OAA is a rough measure of how the physical sacrifice of old age is ranked in this market. Once again, if ADC were a program serving widowed mothers, it would probably be easy enough to enact an earned income exemption for them. It is not so easy where illegitimacy and family conflict together represent the cause of so high a percentage of the cases because it would require the politician to tell his constituents that he is supporting a public policy which seems to equate promiscuity and lack of family responsibility with old age and blindness as reasonable grounds for assistance beyond the bare subsistence level. The compromise arrangement of the Economic Opportunity Act will probably affect job corps enrollees rather than ADC mothers; in any event, it is not an exemption of earnings, but, as the statute says, 'of payments' made by government. If Ford Foundation money can show that the incentive value of an earned income exemption can make a serious dent in the number of ADC cases, such a public policy may become palatable as an investment. In the meanwhile, it is only foundation policy, and foundation policy demands no behavioral sacrifices from its grantees; public policy does."

Steiner, *Social Insecurity: The Politics of Welfare* (1966), 131. Likewise Moynihan, in discussing the Advisory Council on Public Welfare's proposed "Nationwide Comprehensive Program of Public Assistance upon a Single Criterion; Need" and the proposal of legal scholars and social scientists that welfare be established as a *right*, pointed out that;

* * * * * *

"Again it may be noted that these are proposals that in the instance will tend to increase the number of persons on welfare. It should also be noted that they may also serve to lower the public's acceptance of the program. Social work professionals and bureaucrats assuredly have their limitations, but it is as near to certain as social science can be that they are considerably more permissive, broad-minded, and tolerant than the public at large. The strategy of politicizing the welfare issue is risky, indeed. It could easily serve to divide rather than unify American society, and would do so along just those lines of race and ethnicity that it has been the genius of politics in New York to keep blurred. * * *" Moynihan, *The Crises in Welfare*, 10 *The Public Interest*, 1, 22 (1968).

The maximum grant regulation, as an effort to maintain confidence in the reasonableness of welfare programs on the part of groups not presently benefiting from them is a product of normal processes of political compromise, as distinct from an all-or-nothing approach to public problems — a divisive approach scarcely constitutionally compelled. The Appellees here seek judicially decreed greater equity among welfare recipients at the cost of greater inequity between them and wage-earning families. These relative values are now the subject of more appropriate legislative appraisal in the federal Congress.

(2) As a reasonable limitation on the extent to which the state will provide subsidies for child support to welfare recipients which it does not provide to the public generally.[11] While the allowance per additional child provided by the welfare program is limited, the limited applicability to welfare recipients of the ordinary economic

[11] While invasions of privacy or the use of criminal or other drastic sanctions to discourage family growth undoubtedly runs afoul of constitutional safeguards, it is a far cry from this to say that the state may not withhold child subsidies from welfare recipients which are not made available to the public generally.

disincentives to childbearing has been noted by commentators such as Moynihan:

> ". . . while . . . spokesmen are increasingly protesting the oppressive features of the welfare system, and liberal scholars are actively developing the concept of the constitutional rights of welfare recipients with respect to such matters as man-in-the-house searches, it is nonetheless the fact that the poor of the United States today enjoy a quite unprecedented de facto freedom to abandon their children in the certain knowledge that society will care for them, and, what is more, in a state such as New York, to care for them by quite decent standards. Through most of history, a man who deserted his children pretty much ensured that they would starve, or near to it, if he was not brought back and that he would be horsewhipped if he were. Much attention is paid the fact that the number of able-bodied men receiving benefits under the AFDC program is so small. In February 1966 Robert H. Mugge, of the Bureau of Family Services of HEW, reported that of 1,081,000 AFDC parents, there were but 56,000 "unemployed but employable fathers". But in addition to 110,000 incapacitated fathers, there were some 900,000 mothers, of whom far the greatest number had been divorced or deserted by their presumably able-bodied husbands. A working class or middle class American who chooses to leave his family is normally required first to go through elaborate legal proceedings and thereafter to devote much of his income to supporting them. Normally speaking, society gives him nothing. The fathers of AFDC families, however, simply disappear. Only a person invincibly prejudiced on behalf of the poor will deny that there are attractions in such freedom of movement." Moynihan, *supra* at 10-11.

Similar concerns are reflected in the "family planning" provisions of the 1967 amendments, 42 U.S.C.A. §602 (a) (15). These concerns are not peculiarly related to contemporary American conditions. Cf. The Report of the

British Royal Commission on Population, Cmd. 7695 Art. 452 (1949) and compare the viewpoint of Simons, *Economic Policy for a Free Society* (1948) at 28-29:

> "A society based on free responsible individuals or families must involve extensive rights of property. The economic responsibilities of families are an essential part of their freedom and, like the inseparable moral responsibilities, are necessary to moral development. Family property in the occidental sense of the primary family, moreover, is largely the basis of preventive checks on population and of the effort to increase personal capacity from generation to generation, that is, to raise a few children hopefully and well or to sacrifice numbers to quality in family reproduction."

(3) As a less socially damaging means than across-the-board cuts of carrying out necessary economies. See Abbott, *From Relief to Social Security*, 286 (1941), where it is observed that as a matter of social work practice, "when limited funds are available, it is much better to give adequate relief to a small number of families and appeal to the leigslature or county board for funds to care for (others) . . . it is, at any rate, a mistake to reduce the whole program to the general level of poor relief."

## CONCLUSION

Reduced to its essentials, this case involves the constitutionality of a state regulation founded on the principle of "less benefit", a basic tenet of economic *laissez faire*, chosen as an alternative to more generous policies of assistance which would be accompanied by greater and perhaps less effective direct social controls. The case puts to the test as clearly as any case could the continuing vitality of the principles of Justice Holmes' dissenting opinion in *Lochner v. New York*, 198 U.S. 45, 75 (1905):

> ". . . (A) Constitution is not intended to embody a particular economic theory, whether of paternalism

> and the organic relation of the citizen to the state or of *laissez faire*. It is made for people of fundamentally differing views . . . the 14th Amendment is perverted when it is held to prevent the natural outcome of a dominant opinion, unless it can be said that a rational and fair man necessarily would admit that the statute proposed would infringe fundamental principles as they have been understood by the traditions of our people and our law. It does not need research to show that no such sweeping condemnation can be passed upon the statute before us."[12]

The drastic constitutional decision of the lower court, reached in disregard of principles of equitable abstention and in disregard of the principles which have governed federal judicial review of state economic legislation for the last thirty years should be reversed. *Williamson v. Lee Optical Co.*, 348 U.S. 483 (1955); *Snell v. Wyman*, 89 S. Ct. 553 (1969); *McInnis v. Ogilvie*, 89 S. Ct. 1197 (1969).

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October 31, 1969

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[12] Compare *Schneider v. Smith*, 390 U.S. 17, 25: "The purpose of the Constitution and Bill of Rights, unlike more recent models promoting a welfare state, was to take government off the backs of people."

## PROOF OF SERVICE

I, Robert F. Sweeney, one of the attorneys for appellants herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that, on the 31st day of October, 1969, I served a copy of the foregoing Brief For The Appellant on the Appellees herein, by hand delivery, to Joseph A. Matera, Esquire, 341 N. Calvert Street, Baltimore, Maryland 21202.

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1969

# No. 131

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EDMUND P. DANDRIDGE, *et al.*,

*Appellants,*

*vs.*

LINDA WILLIAMS, *et al.*,

*Appellees.*

---

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

---

## BRIEF FOR APPELLEES

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# IN THE SUPREME COURT OF THE UNITED STATES

**OCTOBER TERM, 1969**

## No. 131

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EDMUND P. DANDRIDGE, *et al.*,

*Appellants,*

*v.*

LINDA WILLIAMS, *et al.*,

*Appellees.*

---

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

---

## BRIEF FOR APPELLEES

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### Opinions Below

The initial opinion of the United States District Court for the District of Maryland is reprinted at A. 87. The supplemental opinion and order of the District Court, after reargument, is reprinted at A. 238. The opinions are reported at 297 F.Supp. 450.

## Jurisdiction

The decree of the three-judge district court declaring unconstitutional the maximum grant regulation set forth in the Maryland Manual of the Department of Social Services, Part II, Rule 200, Section VII, 1. (now Rule 200 X, B) and permanently enjoining its enforcement was entered on March 18, 1969. Notice of appeal was filed on March 20, 1969 and probable jurisdiction was noted on October 13, 1969. The jurisdiction of this Court is conferred by 28 U.S.C. 1253 which provides for direct appeals from decisions of three-judge district courts.

## Questions Presented

1. Whether the provisions of Rule 200 § X, B (formerly Rule 200 § VII, 1.) of the *Maryland Manual of the Department of Social Services, Part II,* which deny assistance to some of the children in large families, participating in the Aid to Families With Dependent Children Program, Title IV of the Social Security Act of 1935, regardless of determined need, violates the guarantee of equal protection of the laws contained in the Fourteenth Amendment to the United States Constitution.

2. Whether the provisions of Rule 200 § X, B (formerly Rule 200 § VII, 1.) of the *Maryland Manual of the Department of Social Services,* by disregarding the needs of some of the children of large families, and in effect treating the family as the proper unit of assistance, providing a powerful incentive to fragment the family unit, violates the fundamental purposes of the Aid to Families With Dependent Children Program, Title IV of the Social Security Act of 1935.

## Constitutional and Statutory Provisions Involved

The Fourteenth Amendment to the Constitution of the United States provides in pertinent part that:

> [N]or shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Rule 200 § X, B (formerly Rule 200 § VII, 1., the originally challenged regulation which the lower Court invalidated), of the *Manual of the Maryland Department of Social Services* provides in pertinent part that:

> B. *Amount*—The amount of the grant is the resulting amount of need when resources are deducted from requirements as set forth in this Rule, subject to a maximum on each grant from each category:
>
> 1. $250—for local departments under any "Plan A" of Shelter Schedule
>
> 2. $240—for local departments under any "Plan B" of Shelter Schedule
>
> *Except that*:
>
> a. If the requirements of a child over 18 are included to enable him to complete high school or training for employment (III-C-3), the grant may exceed the maximum by the amount of such child's needs.
>
> b. If the resource of support is paid as a refund (VI-B-6), the grant may exceed the maximum by an amount of such refund.

This makes consistent the principle that the amount from public assistance funds does not exceed the maximum.

c. The maximum may be exceeded by the amount of an emergency grant for items not included in a regular monthly grant (VIII).

## Statement

### A. The Pleadings and Procedure

These proceedings were commenced on February 28, 1968, when Appellees, Linda Williams, Junius Gary and Jeanette Gary, for themselves and on behalf of their minor children and all other parents, relations or minor children similarly situated, filed a complaint *in forma pauperis* (A. 5) in the United States District Court for the District of Maryland requesting that a three-judge court be convened to determine the controversy and to enter a permanent injunction enjoining Appellants from enforcing the provisions of Rule 200, VII, 1. of the *Manual of the Maryland Department of Social Services* (now Rule 200 § X, B), the family maximum grant regulation. The complaint further requested a declaratory judgment declaring that the Maryland maximum grant regulation contravened the purpose and intent of the AFDC Program, 42 U.S.C. §§ 601 *et seq.* and Article 88A, §§ 44A and 49, Annotated Code of Maryland, and denied Appellees due process and equal protection of the laws in contravention of the Fourteenth Amendment to the Constitution. Filed simultaneously with the complaint were Appellees' Motions for a Temporary Restraining Order and Preliminary Injunction (Docket Items 5 and 6). The complaint alleged that the maximum

grant regulation, limiting the grant to Two Hundred Fifty Dollars ($250.00) per month regardless of family size or determined need, discriminated against large families in that it ignored the determined needs of some of the children in a family of seven (7) persons or more, the maximum being based upon and restricted to meeting the full subsistence and shelter needs of a family of six (6) persons or fewer.

Pursuant to the Notification and Request for a Three Judge Court, a panel was designated (Docket Item 10). Following the filing of Appellants' Motion to Dismiss on March 21, 1968 (Docket Item 12), and their Amended Motion to Dismiss (A. 55), filed on June 21, 1968, a hearing was held and an oral opinion rendered on June 25, 1969, denying Appellants' Amended Motion to Dismiss (A. 83). An order of the court was entered denying the motion on June 26, 1968 (Docket Item 19).

In an opinion rendered on December 13, 1968, the Court below ruled that the maximum grant regulation violated the basic philosophy underlying the Aid to Families With Dependent Children Program (AFDC) and was in conflict with the legislative purpose and history of the Social Security Act of 1935, as amended, 42 U.S.C.A. §§ 601-609, and further, that it transgressed the equal protection clause (A. 87). Subsequent to the filing of the court's opinion, Appellants filed, on December 23, 1968, a Motion to Amend Findings of Fact and Judgment, Etc. (A. 100). After full argument again on January 3, 1969, the Court, in a second opinion rendered on February 25, 1969, granted in part and denied in part Appellants' motion (A. 238).

In its opinion, the Court again held unconstitutional the maximum grant regulation as violative of the equal protection clause although not deciding whether the maximum

grant regulation conflicted with the Social Security Act, as amended (A. 256).

In accordance with its two opinions, the Court permanently enjoined Appellants from enforcing the maximum grant regulation against Appellees and the class represented, staying such order for a period of forty-five (45) days from the date of its order, March 15, 1969, and by its order denied a requested further stay. Notice of Appeal to the Supreme Court of the United States was filed on March 21, 1969. Application for Stay of Order was made to the Supreme Court of the United States by Appellants and was denied on April 28, 1969. Jurisdiction was noted on October 13, 1969.

B. The Appellees

1. *Linda Williams*

The Stipulations of Fact entered into by all parties to this case (A. 71-74) establish that Linda Williams is a thirty-three-year-old mother of eight children ranging in age from four years to sixteen. She resides in Baltimore City and began receiving public assistance when her husband, William Williams, left her shortly after the birth of their youngest child three years ago. Since her husband's departure she has had no means of support other than public assistance under the AFDC Program. Under the standard of need, as determined by the Appellant, the Maryland Department of Social Services, Mrs. Williams' family should receive benefits in the amount of $296.15 per month. In fact, until the final order of the Court below on March 18, 1969, Mrs. Williams was receiving $250.00 per month by reason of the application of the maximum grant regulation (A. 89).

Mrs. Williams is unable to supplement her welfare payments in any way because of a serious breast condition which has required five operations. In addition, because she has no relatives to assist her, it is necessary that she stay at home continually to care for her children (A. 72).

The payment of rent and heating expenses left Mrs. Williams with less than $175.00 per month to feed and clothe her family and obtain other necessities of life. She is presently seriously in debt in her attempt to provide for her family and keep it together and, if she were required to survive on $250.00 a month, she would have a difficult time supporting her family (A. 72).

If Mrs. Williams were to place two of her children of twelve years or over with relatives, each child so placed would be eligible for assistance in the amount of $79.00 per month, and she and her six remaining children would still be eligible to receive the maximum grant of $250.00 (A. 89).

2. *Junius Gary*

The Stipulations (A. 71-74) show that Junius Gary is the thirty-eight-year-old husband of Jeanette Gary and the father of eight children ranging in age from four to eleven years. He and his family reside together in Baltimore.

Because Mr. Gary is medically disabled, as determined by the Department of Social Services, and thus, unable to obtain employment, he has been receiving AFDC assistance since March of 1962. He has attempted to earn extra money but has been unable to hold a job because of his physical condition. At the time he began receiving AFDC all of Mr. Gary's children were already born (A. 73).

After paying the monthly rent of $75.00 and the gas and electric bill, Mr. Gary had left less than $150.00 to feed and clothe his family and obtain all other necessities, prior to the order of the Court below. This amount of money prohibited the purchase of food stamps and compelled Mr. Gary to buy his family's clothing and shoes on credit resulting in a constant state of indebtedness (A. 74).

According to the minimal standards formulated by the Maryland Department of Public Welfare, the members of the Gary family require $331.50 per month for basic subsistence requirements, but, until the order of the court below, they had been limited to a monthly grant of $250.00 by reason of the maximum grant regulation (A. 71).

Mr. Gary wishes to keep his family together but will have a difficult time achieving this goal if his family is unable to receive more than the maximum grant of $250.00 (A. 74).

If Mr. and Mrs. Gary were to place two of their children between the ages of six and twelve with relatives, each child so placed would be eligible for assistance in the amount of $65.00 per month, and the Garys and their six remaining children would still be eligible to receive the maximum grant of $250.00 (A. 89).

3. *Jeanette Gary*

The Stipulations of Fact show that Jeanette Gary is the thirty-eight-year-old wife of Junius Gary and lives together with him and their family. She is in ill health, suffering from high blood pressure and arthritis and is being treated at Johns Hopkins Hospital Clinic. She is required to remain home because of her illness and to care for her children (A. 74).

## Summary of Argument

A. The Maryland maximum grant regulation, Rule 200-X, B (formerly Rule 200, VII, 1.) of the *Maryland Manual of the Department of Social Services,* denies Appellees, and the class they represent, equal protection of the laws in contravention of the Fourteenth Amendment to the United States Constitution because it allows the statutory entitlement of the first six members of a large family receiving assistance pursuant to the Aid to Families with Dependent Children Program (Title IV of the Social Security Act of 1935, as amended, hereinafter referred to as AFDC) to be recognized and fulfilled while arbitrarily disregarding the statutory entitlement of all needy dependent children who subsequently become a part of the family. Because the regulation distinguishes between similarly situated needy children solely on the basis of family size and since the classification contained in the regulation bears no rational relation to a valid state objective, it is an arbitrary and unreasonable discrimination invalid under traditional concepts of equal protection.

The record establishes that the regulation neither encourages employable recipients to seek employment nor promotes family unity by discouraging desertion, as the State asserts. However, assuming *arguendo* that the regulation encourages a few recipients to seek employment, the classification contained in the regulation is so grossly overinclusive as to be unconstitutional under traditional concepts of equal protection. In addition, the 1967 Amendments to the Social Security Act of 1935, 42 U.S.C. §§ 630-44, presently effective in Maryland, contain a comprehensive work-incentive program that requires certain employ-

able AFDC recipients to seek employment and provides that income derived from employment may, in part, be added to the AFDC grant. This program also provides job training and employment rehabilitation for these individuals. This program has completely pre-empted whatever limited efficacy the maximum grant regulation might have had in inducing parents of large AFDC families to seek employment since higher benefits are not a disincentive to employment. Furthermore, the maximum grant regulation seeks to achieve an impermissible objective, one prohibited by the Social Security Act, in that its *sole* purpose is to coerce mothers of large AFDC families to seek employment[1] in contravention of the Work-Incentive Program, 42 U.S.C. §§ 630-44, which specifically exempts from compulsory employment mothers needed in the home.

Nor does the State regulation promote family stability by discouraging desertion among the marginally employed, as the State alleges. On the contrary, the effect of the maximum regulation is to induce parents of large AFDC families to place a fifth or sixth child in the home of a relative, or in an appropriate institution, where pursuant to Maryland welfare regulations[2] the child's need will be met, leaving the family grant intact.

In regard to this purpose of discouraging desertion; because only a relatively small number of families receive AFDC assistance as a result of parental desertion, the

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[1] Unemployed but employable males who receive AFDC assistance are required as an original and continuing condition of eligibility, to regularly seek, and be unable to find, employment. Therefore, the State regulation plays no role in encouraging male AFDC recipients to find jobs. 42 U.S.C. § 606(a) (1964); Maryland Manual of the Department of Social Services, Rule 200 (III)(D)(1)(d).

[2] *See*, lower Court's Initial Opinion, A. 94, 95.

regulation's classification is constitutionally infirm because it is grossly overinclusive,[3] penalizing dependent children in all AFDC families of seven or more regardless of the reason for the family's dependency.

Thus the maximum grant regulation is unconstitutional under the traditional standard of equal protection, because it is not reasonably related to a valid state purpose. *McLaughlin* v. *State of Florida,* 379 U.S. 184 (1964).

Appellees contend, however, that because the maximum grant regulation impairs the exercise of fundamental rights and contains a "suspect classification" it must withstand a more demanding judicial review and can only be upheld if it promotes a compelling governmental interest. *Shapiro* v. *Thompson,* 394 U.S. 618 (1969). This "special scrutiny" test is appropriate in this case because the State's regulation penalizes Appellees for having large families, substantially infringing upon Appellees' right to marital privacy, *Griswold* v. *Connecticut,* 381 U.S. 479 (1965) and procreation, *Skinner* v. *Oklahoma,* 316 U.S. 535 (1942) and because it denies Appellees, and the class they represent, the most basic right of all, the right to life. In addition, the classification contained in the regulation is "suspect" insofar as it discriminates against dependent children because of their *status* as young children in a large family, *Levy* v. *Louisiana,* 391 U.S. 68 (1968).

Because the maximum grant regulation promotes no compelling governmental interest, *Shapiro* v. *Thompson,* 394 U.S. 618 (1969) and because there are available less onerous alternatives by which the State may accomplish any legitimate purposes it ascribes to the maximum grant regu-

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[3] *Carrington* v. *Rash,* 380 U.S. 89 (1965).

lation, *Sherbert* v. *Verner*, 374 U.S. 398 (1965); *Shapiro* v. *Thompson*, 394 U.S. 618 (1969), the State's regulation must fall under the "special scrutiny" test of equal protection.

B. The regulation also violates the essential purposes of the Social Security Act of 1935, as amended, 42 U.S.C.A. § 601, *et seq.*, by providing a powerful incentive for parents to fragment their family and by disregarding completely the needs of certain dependent children.

Section 401 of the Social Security Act, 42 U.S.C.A. § 601, declares, as a purpose of the Act, the strengthening of family life. The Maryland statute authorizing State participation in the AFDC Program, Article 88A, § 44A, Annotated Code of Maryland (1957) provides that this is the *primary* purpose of AFDC. This Congressional and State decision to actively encourage poor families to remain intact and together is substantially frustrated and undermined by the State regulation's built-in incentive inducing family fragmentation.

The Act is further violated insofar as the regulation arbitrarily ignores the need of certain dependent children by imposing, as an additional prerequisite of eligibility, that a child be born into a small family. *Doe* v. *Shapiro*, 302 F.Supp. 761 (D.Conn., 1969). This State decision to treat the family as the appropriate unit of assistance under the AFDC Program directly contradicts the guarantee of 42 U.S.C.A. § 602(a)(10) that assistance be given all eligible individuals.

Furthermore, penalizing needy dependent children for a *parental decision* to have a large family cannot be recon-

ciled with this Court's decision in *King* v. *Smith*, 392 U.S. 309, 325 (1967) where it was held that public assistance cannot be denied to needy, dependent children as a result of misconduct by a parent.[4]

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[4] Contrary to Appellants' assertion (Brief of Appellants, 17, 18) it was not inappropriate, for a number of reasons, for the lower Court to refuse to abstain (Oral Opinion, A. 86, 87). Most importantly, this case lacks the "extreme circumstances" stated by this Court in *Zwickler* v. *Koota*, 389 U.S. 241 (1967) to be the necessary factor requiring abstention. Abstention is not required merely to give state courts the first opportunity to vindicate a federal claim. *Zwickler* v. *Koota*, *supra* at 251; *Gorun* v. *Fall*, 393 U.S. 398, 399 (1968) (Justice Douglas, Concurring Opinion); *McNeese* v. *Board of Education*, 373 U.S. 668 (1962). Also, assertion of jurisdiction by the lower Court caused no needless friction between enforcement of the state and federal policies. *King* v. *Smith*, 392 U.S. 309 (1967); *Holmes* v. *New York City Housing Authority*, 398 F.2d 262, 266 (2d Cir. 1968). Furthermore, Appellees did not, and do not now, question the clarity of the maximum grant regulation and there is no possible construction of that regulation which could "avoid or modify the constitutional question". *Zwickler* v. *Koota*, *supra* at 249; *United States* v. *Livingston*, 179 F. Supp. 9, 12-13 (E.D.S.C. 1959), *aff'd* 364 U.S. 281 (1959). In this case there was a need for immediate judicial relief to safeguard basic civil rights and prevent irreparable injury making abstention further inappropriate. *Williams* v. *Rhodes*, 393 U.S. 23, 70 (1968) (Chief Justice Warren, Dissenting Opinion); *Wright* v. *McMann*, 387 F.2d 519, 525 (2d Cir. 1967); *Holmes* v. *New York City Housing Authority*, *supra* at 266; *Bozanich* v. *Reetz*, 297 F. Supp. 300, 304 (D. Alas. 1969). Finally, the state law claim was not, as the lower Court rightly concluded, one upon which Appellees relied (First Opinion, A. 94, n.13). *See*, Plaintiffs' Memorandum in Opposition to Defendants' Motion to Dismiss, Docket Item 15.

## ARGUMENT

### I.

**The Provisions of Rule 200, VII, 1. [now Rule 200-X, B] of the Manual of the Maryland Department of Social Services, Part II, Which Arbitrarily Deny Assistance to Some of the Children in Large Families Participating in the Aid to Families With Dependent Children Program, Title IV of the Social Security Act of 1935, Regardless of Determined Need, Violate the Guarantee of Equal Protection of the Laws Contained in the Fourteenth Amendment to the United States Constitution.**

The maximum grant regulation, Rule 200, VII, 1. [now Rule 200, Sec. X, B], *Manual of the Maryland State Department of Social Services* (hereinafter referred to as *State Manual*), limits assistance payments under the Aid to Families with Dependent Children Program (AFDC) to $250.00 per month. The AFDC program is a categorical assistance program enacted by Congress as a part of the 1935 Social Security Act under a scheme of "cooperative federalism." *King* v. *Smith*, 392 U.S. 309, 312 (1968). Subject to the $250.00 family maximum, AFDC assistance payments are based on minimal standards of individual need as determined by the State Department of Social Services, for subsistence items: shelter, food, clothing, school supplies and transportation. *State Manual*, Part II, Rule 200. If the determined needs of an AFDC family exceed $250.00 per month, the assistance payment will not meet the excess need. The standards formulated by the State put AFDC families of six (6) persons or less below the maximum grant and put the needs of AFDC families of seven (7) persons or more above the maximum. The dependent chil-

dren in small families receive full assistance needs, whereas dependent children in large families receive less than minimal subsistence needs. Obviously, the disparity between the amount of the grant and the amount of determined need increases in even larger families. For example Appellee Linda Williams and her eight children should receive $296.15 per month according to the State's standards of need or $46.15 more than the $250.00 maximum. Appellees Junius and Jeanette Gary and their eight children should receive $331.50 per month under the same State schedules or $81.50 more than they actually received prior to the enforcement of the lower Court's order (Stipulation of Facts, A. 71). As a result, the dependent children of large AFDC families live without essential food, clothing and shelter. The Court below, and every other court to consider the issue of family maximums, fully recognized that dependent children are needy whether they belong to large or small families. Accordingly, every court to consider the constitutionality of maximum grant regulations has held them unconstitutional because they violated the Fourteenth Amendment's guarantee of equal protection of the laws.[5]

A. The Requirements of Equal Protection.

Traditionally this Court has interpreted the equal protection clause of the Fourteenth Amendment to invalidate legislation (or administrative regulations) unsupported by a rational basis, thus condemning statutes containing

[5] *Collins* v. *State Board of Social Welfare*, 248 Iowa 369, 81 N.W. 2d 4 (1957); *Dews* v. *Henry and Inclan* v. *Graham*, 297 F. Supp. 587 (D. Ariz. 1969); *Westberry* v. *Fisher*, 297 F. Supp. 1109 (D. Me. 1969); *Lindsey* v. *Smith*, —— F. Supp. —— (D. Wash. Civ. No. 7636, August 20, 1969). Cf. *Anderson* v. *Burson*, 300 F. Supp. 401 (N.D. Ga. 1969); *Metcalf* v. *Swank*, 293 F. Supp. 268 (N.D. Ill. 1968); *Kaiser* v. *Montgomery*, —— F. Supp. —— (N.D. Cal. Civ. No. 49613, August 4, 1969).

classifications that are not reasonable in light of the purposes the statute is intended to serve.[6] This standard has been verbalized by the Court on numerous occasions:

> [Classification] . . . must always rest upon some difference which bears a reasonable and just relation to the act in respect to which the classification is proposed, and can never be made arbitrarily and without any such basis.
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> *Gulf, C. & S.F.R. Co.* v. *Ellis*, 165 U.S. 150, 155 (1897).

> The courts must reach and determine the question whether the classifications drawn in a statute are reasonable in light of its purpose.
>
> *McLaughlin* v. *State of Florida*, 379 U.S. 184, 191 (1964).

It is, of course, fundamental that not all discriminatory treatment of a class is unconstitutional and that a statute "which affects the activities of some groups differently from the way in which it affects the activities of other groups" is not automatically constitutionally impermissible. *Kotch* v. *Board of River Port Pilot Commissioners*, 330 U.S. 552, 556 (1947). It is only arbitrary and unreasonable discriminations that are proscribed by the Fourteenth Amendment.[7] It is "[w]hen the existence of a distinct class is demonstrated, and [when] it is further shown

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[6] *See*, e.g., *Rinaldi* v. *Yeager*, 384 U.S. 305, 309 (1966); *Carrington* v. *Rash*, 380 U.S. 89, 93 (1965); *Morey* v. *Doud*, 354 U.S. 457, 465 (1957); *Truax* v. *Corrigan*, 257 U.S. 312, 337 (1921); *Truax* v. *Raich*, 239 U.S. 33, 42 (1915); *Southern Ry.* v. *Green*, 216 U.S. 400, 417 (1910).

[7] *Levy* v. *Louisiana*, 391 U.S. 68, 71 (1968); *Yick Wo* v. *Hopkins*, 118 U.S. 356 (1886).

that the . . . different treatment is not based on some reasonable classification, [that] the guarantees of the Constitution have been violated." *Hernandez* v. *Texas*, 347 U.S. 475, 478 (1954).

Assuming the statutory purpose itself is constitutionally proper the central inquiry, under the traditional test of equal protection, is whether there is a sound reason for differentiating among similarly situated individuals and according some disparate treatment.

That this standard of judicial review is not appropriate in all equal protection cases has been demonstrated often.[8] In determining that all constitutional challenges should not be reviewed in exactly the same manner this Court has "been extremely sensitive when it comes to basic civil rights," *Levy* v. *Louisiana*, 391 U.S. 68, 71 (1968), and has held that, where fundamental rights are at stake, "strict scrutiny of the classification . . . is essential . . . " *Skinner* v. *Oklahoma*, 316 U.S. 535, 541 (1942), to assure that none are denied equal protection of the laws. Fundamental rights may not be abridged by a showing of merely *some* rational relationship between a statute's classification and a proper legislative purpose and the burden is upon the State to justify infringement of these rights in order to safeguard a "compelling state interest."[9]

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[8] *See*, e.g., *Shapiro* v. *Thompson*, 394 U.S. 618 (1969); *Skinner* v. *Oklahoma*, 316 U.S. 535, 541 (1942); *Levy* v. *Louisiana*, 391 U.S. 68 (1968); *Griswold* v. *Connecticut*, 381 U.S. 479 (1965); *Harper* v. *Virginia Board of Elections*, 383 U.S. 663 (1966); and pp. 36 to 39, *infra*.

[9] *Williams* v. *Rhodes*, 393 U.S. 23, 31 (1968); *Shapiro* v. *Thompson*, 394 U.S. 618 (1969); *Skinner* v. *Oklahoma*, 316 U.S. 535, 541 (1942); *Harper* v. *Virginia Board of Elections*, 383 U.S. 663 (1966); *Kramer* v. *Union Free School District*, 394 U.S. 621, 627 (1969).

A similarly stringent standard of judicial review is called for when statutes contain "suspect classifications" based upon, *inter alia*, race, status, wealth and alienage.[10]

Because this case involves both a suspect classification and the infringement of basic and fundamental rights, "special scrutiny" of the maximum grant regulation is required. Due to the absence of a compelling state interest and the existence of less onerous alternatives to accomplish valid state objectives the regulation must, as the lower Court properly concluded, fall under this more demanding standard of judicial review. (See, p. 36 to p. 39, *infra*, for a more detailed discussion of this point.)

However, the maximum grant regulation is also constitutionally defective under the traditional standard of equal protection because it contains a classification not reasonable in light of the regulation's purposes and thus, subjects Appellees, and the class they represent, to arbitrary and invidious discrimination.

### B. The Maximum Grant Regulation Under Traditional Standards of Equal Protection Effects an Arbitrary and Unreasonable Discrimination Against Appellees and the Class They Represent and Achieves No Legitimate State Objective.

The result of the maximum grant regulation is to create two subclasses of AFDC recipients, those who are members of large families containing seven or more people and those who belong to families of six members or less. The statu-

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[10] *Hunter* v. *Erickson*, 393 U.S. 385 (1969); *Korematsu* v. *United States*, 323 U.S. 214, 216 (1944); *Griffin* v. *Illinois*, 351 U.S. 12 (1956); *Douglas* v. *California*, 372 U.S. 353 (1963); *Loving* v. *Virginia*, 388 U.S. 1 (1967); *Skinner* v. *Oklahoma*, 316 U.S. 535 (1942).

tory entitlement of members of the smaller families is recognized and implemented, i.e., total subsistence need as determined by the Maryland Department of Social Services is paid. Members of the larger families, on the other hand, receive less than determined need, are forced to live below subsistence level and suffer severe pressures to fragment their family because of the maximum. (See Stipulation of Facts, A.72, 73, 74.) The *sole* reason for this differential treatment is family size.

Appellants do not contest that the maximum discriminates against large families but urge several theories to support the regulation. They suggest that the regulation operates as a work incentive by making marginal employment more financially attractive than public assistance. A related proposition is that a maximum on welfare benefits maintains these benefits at a point below minimum wage levels and thus discourages desertion by employed family heads. A third purpose ascribed to the regulation by Appellants is one of population control, i.e., a maximum discourages procreation and family growth. It is also suggested that the maximum insulates the welfare system from public antagonism and criticism. Finally, it is simply alleged that the regulation is a rational way of allocating state funds to best meet the needs of the poor.

Appellees contend that the regulation is not a rational means of effectuating legitimate state purposes and is, instead, counterproductive in many instances.[11]

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[11] It is important to note that Appellants raised these theories for the first time below in their Memorandum in Support of their Motion to Amend (Item 29); thus only after the initial opinion was rendered by the court below. This tardiness is indicative that the purposes ascribed to the maximum grant regulation are more contrived than real. Other evidence also supports this con-

1. *The Maximum as a Work Incentive*

Appellants contend that the maximum grant regulation, by limiting benefits below minimum wage levels, provides recipients of AFDC with an incentive to seek employment. The State of Maryland has thus sought to present an extremely over-simplified approach to a very complex question, the creation of economic independence among the poor. It seeks to do this by reliance on the ancient doctrine embodied in the New Poor Law of 1834, part of the England of Charles Dickens, which held that no income derived from welfare benefits should exceed the amount that the lowest paid independent worker in the community could earn; the so-called doctrine of "less-eligibility" or "less-benefit". This hoary principle of setting benefit levels low in an attempt to creat an incentive to work conflicts clearly and dramatically with our present day acceptance of the social welfare principle that all needy, dependent individuals in our society should be assured a basic level of financial assistance and that the disadvantaged in our society should be rehabilitated and not punished by unfair administrative regulations such as the maximum grant regulation.

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clusion. According to the affidavit of the defendant Raleigh Hobson, Director of the State Department of Social Services, the maximum has been adjusted to reflect changes in the cost of living rather than changes in prevailing wage rates or minimum wage standards. Affidavit in Support of Defendants' Motion to Amend, Etc. Ex. B (A.15). Until 1961 the AFDC program excluded unemployability of the breadwinner as a basis of eligibility. 42 U.S.C. §607. Presently, about 25 states have opted to participate in this aspect of the program. Historically, the State's work incentive principle has been enforced through a maximum, although employable persons were not covered and geared to the cost of living rather than to wage levels. Moreover, the State's only witness, Thomas Schmidt, indicated that the inadequacy of State appropriations was the sole reason for retaining the $250.00 ceiling. Transcript, A.77, 78.

The central premise of the "less-eligibility" or "less-benefit" theory, that the regulation would provide the incentive to seek gainful employment, has been completely vitiated by the passage of the 1967 Amendments to the Social Security Act (P.L. 90-248, 42 U.S.C. §§ 630-44). These Amendments not only provide recipients with a powerful incentive to *voluntarily* search for employment by allowing employed recipients to keep the first thirty ($30) dollars plus one-third (⅓) of the net take-home pay (after deductions for allowable work expenses),[12] but also *compel* all employable recipients, subject to certain limited exceptions,[13] to undertake training and to seek employment or forfeit their right to assistance.[14]

The maximum grant regulation therefore plays no role in encouraging employment since higher benefits are not a disincentive to employment. Certainly a state regulation which is unrelated to the achievement of a legitimate state purpose is constitutionally defective under traditional concepts of equal protection. (See p. 15 to p. 20 *supra*.)

Thus, the harsh theory of less-benefit has been rejected and replaced by more modern and humane methods of inducing employment.[14a] This more constructive approach is characterized by principles of education and manpower-retraining to teach useful occupational skills, rather than the

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[12] In Maryland, this provision is contained in the ***Manual of Public Assistance***, Part II, Rule 200, VI, B (8) (c) (2). .

[13] *See* p. 23 *infra*.

[14] The Work Incentive Program is now being implemented in Maryland, *State Manual*, Rule 200, B, and, unlike the maximum regulation, is directed "precisely at aiding and encouraging those who are in fact employable." Second Opinion, A.255.

[14a] As a matter of fact, the principle of "less-benefit" was denounced over a century and a half ago in England, the situs of the origin of this principle. De Schweinitz, *England's Road to Social Security*, 188 (1943).

coercion implicit in the "less-benefit" principle which further penalizes and degrades the poor. This Work Incentive Program also provides recipients with needed social services, counselling, and day-care centers for young children to facilitate the transition from welfare to work and includes an income exemption to improve the level of life for those recipients who are able to work.

Appellees do not undertake to enter into sociological debate with the State of Maryland. The issues here are clearly legal and constitutional issues, to be resolved by this Court in the light of clearly established principles of law. However, in view of the heavy sociological emphasis in Appellant's Brief, Appellees would be remiss in not making this summary reference to this extremely complex question of the efficacy of competing theories of eliminating poverty in our nation. The matter has indeed been dealt with in depth by sociologists, as referred to in the State's Brief, and elsewhere.[15]

The classification contained in the maximum grant regulation is constitutionally infirm for another reason; it is grossly overinclusive. The Court below found, citing statistics on AFDC-UP (Aid to Families with Dependent Children of Unemployed Parents) and other factors, that a very small percentage of AFDC families are employable. (A. 254, citing Plaintiffs' Ex. "E" attached to Memorandum of Plaintiffs in Opposition to Defendants' Motion to Amend,

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[15] *See*, for example, an excellent recent article by Martin Rein, *Choice and Change in the American Welfare System*, The Annals of the American Academy of Political and Social Science, September, 1969, pp. 89-109; also note this Court's footnote 22, in *King* v. *Smith*, 392 U.S. 309, 325, in which this Court recognized the "* * * new emphasis on rehabilitative services began with the Kennedy Administration '* * * [which have] demonstrated what can be done with creative . . . programs of prevention and social rehabilitation'."

Etc., Docket Item 26.) In fact, the statistic exaggerated the importance of the regulation's work incentive since the maximum did not affect all AFDC-UP families but only those containing seven or more members.

It is clear that the "employables" the State refers to are mothers of large families since under the subcategory of AFDC which provides assistance to families of unemployed fathers (AFDC-UP) a continuing condition of eligibility is a requirement that the recipient report, at least monthly, to the Department of Employment Security to see if work is available. If a job is open, the recipient must take it or lose his right to assistance. *State Manual,* Rule 207-5 (now Rule 200, III (D)(1)(d), 42 U.S.C. § 606(a) (1964).[16]

Mothers of large, needy families have parental responsibilities which form great obstacles to gainful employment. Carter, *The Employment Potential of AFDC Mothers,* 6 Welfare in Review No. 4 at 4 (1968). In such cases welfare experts agree that mothers are rarely employable persons. Carter, *supra,* at 7. The social science references cited by Appellants in their Brief do not suggest a different viewpoint and do not touch on the employability of mothers in large families. Appellants' use of the word "employable" plays fast and loose with the harsh realities faced by a mother of a large, needy family.

In fact, the state-wide criteria of the Work Incentive (WIN) Program indicate that referral of AFDC mothers may be inappropriate where many children or pre-school children are in the home. This is made abundantly clear by the State's own regulations. Rule 200 IX A (2) (b) (5)

[16] This matter is referred to and argued in depth in Memorandum of Plaintiffs in Opposition to Defendants' Motion to Amend, Etc., pp. 13, 14, 15. (Docket item 26).

of the *State Manual* prohibits referral of an AFDC mother who is needed in the home according to the following criteria:

> (a) The day to day demands on the mother in carrying out household work and meeting home needs of the children. In this context *the size of family* together with age distribution of children, and the ability and availability of older children and others in the home to meet such demands will be considered (emphasis supplied).
>
> (b) The needs of pre-school age children.
>
> (c) The special emotional needs or special needs for adult supervision of one or more children, which could be met best by the mother *being in the home* (emphasis supplied).

The above regulation is effective November 1, 1968, implementing Section 406, "Program Standards" Work Incentive Program Handbook, issued by the Manpower Administration of the U. S. Department of Labor. The regulation excludes by clear inference mothers of large families from the WIN program.

The 1967 Amendments did not, as Appellants suggest, adopt an employable mother rule as to all AFDC families regardless of individual circumstances. The concept of employability must be carefully applied to AFDC families, especially those with many children in order to avoid family breakup. Especially after the 1967 Amendments, family rehabilitation is the most relevant aspect of the AFDC program. *King* v. *Smith*, 392 U.S. 309, 325 (1968).

Finally, all of the potentially employable persons who are members of the Williams or Gary families are disabled by

poor health or other circumstances from seeking employment.[17] It is simply irrelevant to apply the "less-benefit" principle of encouraging employment to individuals who could not, in any event, be gainfully employed.[18] Second Opinion, A. 254.

The State in its Brief (p. 23) blandly characterizes the situation of the named plaintiffs, all of whom were unemployable as a result of illness and disability, as "highly exceptional." Statistics belie such a light-handed treatment of the plight of the poor on welfare. Figures made available to the Joint Economic Committee in congressional hearings indicate that 28 percent of the adult, non-aged poor in 1964 were classified as ill or disabled. About 17 percent of all poor adult males and 42 percent of poor adult

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[17] *See* Second Opinion, A. 254 and Parties' Stipulations of Facts, A. 71, 72, 74.

[18] A major premise of the less benefit principle, that there are jobs available for recipients, is demolished by the reality of the labor market. In a 1966 Report by the Legislative Council Committee on Public Welfare Cost, Exhibit "F" attached to Defendants' Memorandum in Support of Motion to Amend, A. 127, it is stated:

> As of May, 1966 there were 3,752 job openings of all kinds in the Baltimore metropolitan area. This is estimated by the Maryland State Employment Service to represent not more than 20% of all jobs available in the area. On this basis, the maximum number of jobs available in the Baltimore area would be 18,760. At the same time there were 26,000 individuals unemployed looking for work in the same area. *If all AFDC parents in the Baltimore area were trained in all the categories of the available jobs ranging from engineers to waitresses, there would not be enough jobs available to employ all of them* (emphasis added).

Another premise of the "less benefit principle" that stands on a very shaky foundation is the theory that given the choice between equal financial gain from employment and public assistance, people will choose the latter. *See,* Briar, *Welfare From Below: Recipients' Views of the Public Welfare System,* 54 *Calif. L. Rev.* 370 (1966).

females were found to be ill or disabled. Further studies revealed that among the adult poor who did not work, 44 percent of the men were classified as disabled, as compared with 10 percent of the women.[19]

Appellees recognize that a classification, to be constitutional, need not be made with "mathematical nicety," *Lindsley* v. *Natural Carbonic Gas Co.*, 220 U.S. 61, 78-79 (1911) but contend that the classification contained in the maximum grant regulation is so patently overinclusive as to guarantee much more than the necessary "play in the joints of governments," *Bain Peanut Co.* v. *Pinson*, 282 U.S. 499, 501 (1930) and go far beyond tolerable dissymmetry. *Patsone* v. *Pennsylvania*, 232 U.S. 138, 144 (1913).

Not only is the regulation grossly overinclusive,[20] but also defectively underinclusive as well.[21] If AFDC families

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[19] U. S. Congress, Joint Economic Committee, Subcommittee on Fiscal Policy, Hearings on Income-Maintenance Programs, 90th Congress, 2nd Sess., June, 1968, Vol. 1, table 4, p. 165. *See also*, p. 8 of the Report of these hearings where Mitchell Ginsberg, former Commissioner of the New York City Department of Welfare, stated that:

> By and large the major part of the caseload is made up of the aged, the very young, and the disabled—people who cannot reasonably be expected to work either at the present time or in the foreseeable future . . .

[20] *See Carrington* v. *Rash*, 380 U.S. 89 (1965), where this Court held unconstitutional a statute containing a classification suffering from similar overinclusiveness. For further support, *see Developments in the Law—Equal Protection*, 82 *Harv. L. Rev.* 1065, 1086-87 (1969).

[21] In an extensive comment on equal protection the editors of Harvard Law Review noted that:

> In fact, it appears from the cases that an overinclusive classification is frequently underinclusive as well, and the courts are properly more reluctant to permit such classifications to stand. *See, e.g., Rinaldi* v. *Yeager*, 384 U.S. 305 (1966); *Carrington* v. *Rash*, 380 U.S. 89 (1965). *Developments in the Law—Equal Protection*, 82 *Harv. L. Rev.* 1067, n. 48 (1969).

are to be encouraged to work, all recipients, not merely members of large families should be subject to the "economic whip."[23] This Court recently recognized this principle in *Shapiro* v. *Thompson*, 394 U.S. 618, 637-38 (1969), stating:

> A state purpose to encourage employment provides no rational basis for imposing a one-year waiting period restriction on new residents only.[24]

Similarly, "a state purpose to encourage employment provides no rational basis for imposing" a maximum grant regulation on large families only.

2. *The Maximum as a Family Stabilizer*

There can certainly be no quarrel with the legitimacy of a state goal of increased family stability and cohesiveness.[24] In fact this is an avowed purpose of the Social Security Act of 1935, as amended, 42 U.S.C.A. §§ 601-609. 42 U.S.C.A. § 601 provides that a purpose of the Act is to encourage:

> *The care of dependent children in their own homes* or in the homes of relatives,[25] . . . enabling each State

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[23] *See Rinaldi* v. *Yeager*, 384 U.S. 305 (1966) employing traditional test of equal protection to invalidate an underinclusive classification.

[24] The court specifically stated that a one-year waiting requirement was invalid under both traditional criteria of equal protection and the "compelling interests" test. *Shapiro* v. *Thompson*, 394 U.S. 618, 638 (1969).

[24] *See, The Negro Family—The Case for National Action*, Office of Policy Planning and Research, United States Department of Labor, March, 1965.

[25] Presumably, only where the original family unit has been dissolved. *See*, lower Court's Initial Opinion, A. 93, 94.

> to furnish financial assistance and rehabilitation and other services, as far as practicable under the conditions in such State, to needy dependent children and the parents or relatives with whom they are living to help *maintain and strengthen family life* and to help such parents or relatives to attain or retain capability for the maximum self-support and personal independence consistent with the maintenance and continuing parental care and protection . . . (emphasis added).

Similarly, the Maryland Code announces, as the *primary* purpose of the Social Security Act,

> The strengthening of family life through services and financial aid * * * . *Maryland Code Annotated,* Article 88A, Section 44A (1964).

It is, however, quite apparent that the maximum grant regulation, rather than providing incentives to encourage family stability, creates powerful pressures to fragment and dissolve the family unit. (*See,* Stipulation of Facts, A. 72, 73, 74.)

Maryland law allows a large family receiving AFDC to maximize its benefits by placing some children with eligible relatives or agencies or an additional assistance unit.[26]

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[26] *See,* Second Opinion, A. 253. Judge Winter, in his Initial Opinion (A. 89) details the exact amount of extra benefits to be gained by this family dissolution.

> If Mrs. Williams were to place two of her children of twelve years or over with relatives, each child so placed would be eligible for assistance in the amount of $79.00 per month, and she and her six remaining children would still be eligible to receive the maximum grant of $250.00. If Mr. and Mrs. Gary were to place two of their children between the ages of six

Placement of some dependent children in this way circumvents the cruelties of the maximum grant regulation but, in obvious contravention of the purposes of the Social Security Act, shatters the basic family unit.[27] These economic realities reveal the counterproductivity of this regulation and fully support the lower Court's conclusion that,

> The maximum grant regulation provides a powerful economic incentive to break up large families by plac-

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and twelve with relatives, each child so placed would be eligible for assistance in the amount of $65.00 per month, and they and their six remaining children would still be eligible to receive the maximum grant of $250.00.

At least two other courts, *Dews* v. *Henry and Inclan* v. *Department of Public Welfare*, 297 F. Supp. 587, 592 (D. Ariz. 1969) and *Westberry* v. *Fisher*, 297 F. Supp. 1109, 1114, n. 15 (D. Me. 1969) have expressly recognized and condemned this divisive feature of the maximum grant regulation, and another court, *Collins* v. *State Board of Social Welfare*, 248 Iowa 369, 81 N.W. 2d 4, 8, 9 (1957) acknowledged the powerful incentive to "farm out" children provided by such a regulation.

[27] A pernicious side effect of the maximum grant regulation, further contributing to destruction of family unity and cohesiveness, is its subjection of large AFDC families to the neglect provisions of Maryland law which permit the State to file a neglect petition against parents, requesting guardianship of children, when a child is "neglected." *Maryland Code Annotated*, Article 26, Section 78. A presumption of neglect arises when a child is:

> (1) Malnourished, ill-clad, dirty, without proper shelter or sleeping arrangements;
>
> * * * * *
>
> (2) Exposed to unwholesome and demoralizing circumstances. *Maryland State Department of Social Services, Manual*, Part II, Rule 209.8.

Denial of benefits to additional children in large families can but result in inevitable "neglect" as defined above.

> ing dependent children . . . in the homes of persons included in the class of eligible relatives.
>
> Initial Opinion, A. 94, 95.[28]

Furthermore, the regulation is so crudely imprecise in its classification as to negate any possible rational connection between the regulation and a valid state purpose.

A 1966 legislative report showed that only 15.2% of AFDC families were eligible for assistance because of parental desertion. (*See,* Exhibit "F" attached to Defendant State of Maryland's Memorandum in Support of Motion to Amend, etc., Report of the Legislative Council Committee on Public Welfare Cost, October, 1966 [A. 154].) A classification that penalizes 85% of its members for the purpose of affecting the behavior of the remaining few suffers from such extraordinary overinclusiveness as to render it patently unreasonable and arbitrary, especially where no evidence exists indicating its success in reaching the tiny fraction it intends to affect. This unreasonableness renders the regulation unconstitutional under the traditional test of equal protection.[29]

When applied to the Appellees the irrationality of the maximum regulation is graphically obvious as the Court below correctly concluded, stating,

> Discouragement of desertion as a rational basis for the maximum grant regulation can have application

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[28] For a reaffirmation of this conclusion *see* the lower court's Second Opinion, A. 250, n. 11. *Accord, Dews* v. *Henry* and *Inclan* v. *Department of Public Welfare,* 297 F. Supp. 587 (D. Ariz. 1969), and *Westberry* v. *Fisher,* 297 F. Supp. 1109 (D. Me. 1969).

[29] *See, Carrington* v. *Rash,* 380 U.S. 89 (1965); *Developments in the Law—Equal Protection,* 82 *Harv. L. Rev.* 1065, 1086-87 (1969).

only to the continued absence subcategory of AFDC; it can have no application to dependency which arises because of death, unemployment, or physical or mental incapacity of the wage earner. The named plaintiffs Junius Gary and Jeanette Gary are examples of eligibles to whom this purpose has no logical application.

Second Opinion, A. 253.

Furthermore, since the maximum does not serve to discourage desertion in small families whose financial condition could improve upon desertion of a marginally employed parent, the regulation's classification does not include all, or even approximately all, those similarly situated. This Court should, as the Court below properly did, reject such a classification as violative of equal protection.[30]

### 3. *The Maximum Grant Regulation as a Disincentive to Child-Bearing*

The right of Appellees, as married persons, to freedom of choice concerning procreation and reproduction and to marital privacy has been firmly established.[31] (See pp. 39 to 41, *infra*.)

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[30] *See, Rinaldi* v. *Yeager*, 384 U.S. 305 (1965).

[31] *Griswold* v. *Connecticut*, 381 U.S. 479 (1965); *Meyer* v. *Nebraska*, 262 U.S. 390, 394 (1922); *Skinner* v. *Oklahoma*, 316 U.S. 535 (1942); *McLaughlin* v. *Florida*, 379 U.S. 184 (1964); *Loving* v. *Virginia*, 388 U.S. 1 (1966). *See, Prince* v. *Massachusetts*, 321 U.S. 158, 166 (1944), recognizing "a realm of family life which the state cannot enter without substantial justification" and Justice Harlan's dissenting opinion in *Poe* v. *Ullman*, 367 U.S. 497, 548, 552 (1960) where he concludes that "the privacy of the home in its most basic sense" is "a most fundamental aspect of 'liberty' . . ." ". . . of this whole private realm of family life it is difficult to imagine what is more private or more intimate than a husband and wife's marital relations."

This Court has left no doubt that, while under certain exceptional circumstances infringement, by government, of this right of procreation and marital privacy will be upheld,[32] it constitutes impermissible invidious discrimination to discourage one class of individuals from exercising these basic rights while zealously safeguarding the exercise of those rights by others similarly situated.[33]

Assuming it is a proper State objective to discourage parents from having large families, the maximum grant regulation is unnecessarily limited in that it discourages procreation only among welfare recipients and is impermissibly broad because it deleteriously affects families, such as Appellees[34] which were *already* large when application was made for AFDC.[35] Thus even under the traditional test of equal protection the classification is invalid.[36]

It is clear, however, that a regulation abridging or discouraging the exercise of these basic rights must withstand a much more demanding judicial examination, i.e., "special scrutiny," and, to be valid, must be based upon a compelling and overriding state interest.[37]

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[32] *See, e.g., Buck* v. *Bell,* 274 U.S. 200 (1927) and *Skinner* v. *Oklahoma,* 316 U.S. 535 (1942).

[33] *Skinner* v. *Oklahoma,* 316 U.S. 535 (1942).

[34] *See, Stipulation of Facts,* A. 72, 73 and Second Opinion, A. 255, 256.

[35] *Accord, Westberry* v. *Fisher,* 297 F. Supp. 1109, 1115, n. 17 (D. Me. 1969).

[36] *See, Carrington* v. *Rash,* 380 U.S. 89 (1965) and *Rinaldi* v. *Yeager,* 384 U.S. 305 (1966).

[37] *Skinner* v. *Oklahoma, supra; Griswold* v. *Connecticut, supra; Shapiro* v. *Thompson,* 394 U.S. 618 (1969) and cases cited at pp. 36 to 39, *infra.*

The "special scrutiny" or "compelling interest" test is also appropriate in this case because the State's alleged "birth control" objective affects only those individuals poor enough to qualify for public assistance and not members of all families, or at least, all large families, and thus constitutes an invidious discrimination based upon poverty.[38]

The State's cryptic suggestion that it may withhold benefits from large families to discourage procreation because there is no general right to public assistance[39] is the same tired assertion of arbitrary power condemned by this Court in a long line of cases.[40]

Here, as in *Shapiro* v. *Thompson, supra,* savings in welfare expenditures are not a sufficiently "compelling state interest" to justify discouragement of basic rights of procreation and marital privacy.

Furthermore, the maximum grant regulation by diluting the size of the grant made to all children when parents choose to have a large family,[41] punishes innocent children

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[38] *Harper* v. *Virginia Board of Elections,* 383 U.S. 663 (1966); *Griffin* v. *Illinois,* 351 U.S. 12 (1956). *See,* pp. 36 to 39, *infra.*

[39] Brief for Appellants, p. 39 n. 11.

[40] *Sherbert* v. *Verner,* 374 U.S. 398 (1965); *Keyishian* v. *Board of Regents,* 384 U.S. 589 (1967); *Schware* v. *Board of Bar Examiners,* 353 U.S. 232, 239 (1957); *Garrity* v. *New Jersey,* 385 U.S. 493 (1967); *Spevack* v. *Klein,* 384 U.S. 511 (1967). The State can't condition public assistance upon surrender of the right to marital privacy and procreation any more than they could condition the same privilege upon the surrender of the right to travel. *Shapiro* v. *Thompson, supra.*

[41] The maximum grant regulation, by coercing family size, operates directly contrary to the principle of *voluntary* family planning contained in the Social Security Act. Social Security Act of 1935 as amended, §§402(a)(14)(15); 42 U.S.C. §§602a(14), (15); H.E.W., Report on Family Planning I, 1966. By penalizing families of seven or more for the birth of additional children the regula-

for the acts of their parents. This was denounced by this Court in *King* v. *Smith*, 392 U.S. 309 (1968) as violative of the Social Security Act[42] and in *Levy* v. *Louisiana*, 391 U.S. 68 (1968) as a denial of equal protection. The Court stated in *Levy*,

> [I]t is invidious to discriminate against them [children] when no action, conduct or demeanor of theirs is possibly relevant . . .
>
> *Levy* v. *Louisiana*, 391 U.S. 68, at 72.

4. *The Maximum Grant as a Means of Best Allocating Limited Funds and Method of Decreasing Public Antagonism*

Appellants' last two arguments are simply assertions of their right to be arbitrary rather than a valid defense of the maximum regulation and require only summary discussion.

This Court's recent decision in *Shapiro* v. *Thompson*, *supra* and numerous lower court decisions have settled beyond dispute that the saving of welfare costs cannot be

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tion's harshness falls heaviest upon those who do not believe in artificial means of controlling birth.

[42] Justice Douglas, concurring in *King* v. *Smith*, 392 U.S. 309, 336 (1967) expressed his belief that it is a denial of equal protection, as well as violative of the Social Security Act, to punish some children for the acts of their mother when all children are equally needy. Likewise, the original Court to strike down a maximum grant regulation as violative of equal protection came to a similar conclusion invalidating the regulation because,

> [it] is clearly discriminatory between dependent children . . . and is purely arbitrary and unreasonable in view of the announced purpose of the act.
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> *Collins* v. *State Board of Social Welfare*, 248 Iowa 369, 81 N.W. 2d 4, 9 (Sup. Ct., 1957).

an independent ground for an invidious classification."[43] *Shapiro* v. *Thompson, supra,* at 633. Under the Social Security Act the intended direct beneficiary is the dependent *child.* (See discussion at p. 55, *infra.*) Thus, Appellants' suggestion that they can reach more *families* by use of a maximum grant regulation bears no relation to the purpose of the Act and is an admission of the regulation's illegality and unconstitutionality.

Assuming *arguendo* that the maximum regulation plays some role in minimizing public antagonism aimed at the welfare system it does so by use of an invidious discrimination denying Appellees and the class they represent equal protection of the laws. This Court has, in the past, refused to allow the constitutional rights (here the right to equal protection) of a few to be sacrificed because of general public disapproval.[44]

Just as the burden of governmental economizing cannot fall unequally upon any one class, the burden resulting from "political compromise" cannot be borne solely by one small group of individuals indistinguishable from others.[45]

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[43] Accord, *Westberry* v. *Fisher,* 297 F.Supp. 1109, 1114-15 (D. Me. 1969); *Dews* v. *Henry* and *Inclan* v. *Department of Public Welfare,* 279 F. Supp. 587, 592 (D. Arizona 1969); *Kaiser* v. *Montgomery,* —— F. Supp. —— (N.D. Cal. Civ. No. 49613, Aug. 4, 1969); *Rothstein* v. *Wyman,* 303 F. Supp. 339 (S.D.N.Y. 1969); *Green* v. *Department of Welfare,* 270 F. Supp. 173 (D. Del. 1967); *Harrell* v. *Tobriner,* 279 F. Supp. 22 (D.D.C. 1967); *Smith* v. *Reynolds,* 277 F. Supp. 65 (E.D. Pa. 1967). *See, Rinaldi* v. *Yeager,* 384 U.S. 305 (1966).

[44] *Cooper* v. *Aaron,* 358 U.S. 1 (1958); *Wright* v. *Georgia,* 373 U.S. 284 (1963); *Terminiello* v. *City of Chicago,* 337 U.S. 1 (1949); *Cox* v. *Louisiana,* 379 U.S. 536 (1965).

[45] In the emotional dialogue about rising welfare expenditures it is usually forgotten that "while actual dollar costs have risen, public welfare expenditures have decreased as a percentage of both National Personal Income and Gross National Product." Maryland State Department of Public Welfare, Research Report No. 2, July, 1967.

C. The Appropriate Standard of Review in This Case Is the "Special Scrutiny" Test of Equal Protection. The Maximum Grant Regulation Is Unconstitutional Under This Test

1. *Origin and Evolution of This Standard*

This Court has "long been mindful that where fundamental rights and liberties are asserted under the equal protection clause, classifications which might invade or restrain them must be closely scrutinized and carefully confined." *Harper* v. *Virginia Bd. of Elections,* 383 U.S. 663, 670 (1965); *Skinner* v. *Oklahoma,* 316 U.S. 535, 541 (1942). Infringement of such a fundamental right, to be valid, must promote "a *compelling* state interest." *Shapiro* v. *Thompson, supra,* at 634.[46]

The "special scrutiny" standard is also proper when classifications are based upon "suspect" criteria such as race,[47] wealth,[48] alienage or nationality[49] or status.[50]

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[46] Among those rights that have been recognized as fundamental by this Court are the right to travel, *Shapiro* v. *Thompson, supra;* the right to vote, *Harper* v. *Bd. of Elections, supra; Reynolds* v. *Sims,* 377 U.S. 533, 561-62 (1964); the right to procreate, *Skinner* v. *Oklahoma, supra;* the right to an education, *Brown* v. *Board of Education,* 347 U.S. 483 (1954); *Bolling* v. *Sharpe,* 347 U.S. 497 (1954); and the right to marry, *Loving* v. *Virginia,* 388 U.S. 1 (1967). *See generally, New Developments in the Law—Equal Protection,* 82 Harv. L. Rev. 1065 (1969).

[47] *Korematsu* v. *United States,* 323 U.S. 214, 216 (1944); *Loving* v. *Virginia, supra; Brown* v. *Bd. of Education, supra; McLaughlin* v. *Florida,* 379 U.S. 184 (1964).

[48] *Harper* v. *Bd. of Elections, supra; Griffin* v. *Illinois,* 351 U.S. 12 (1956); *Douglas* v. *California,* 372 U.S. 353 (1963).

[49] *Oyoma* v. *California,* 332 U.S. 633 (1948); *Takahashi* v. *Fish and Game Commission,* 334 U.S. 410 (1948); *Korematsu* v. *United States, supra.*

[50] *Levy* v. *Louisiana,* 391 U.S. 68 (1968); *Skinner* v. *Oklahoma,* 316 U.S. 535 (1942).

In either case, that is, one involving a fundamental right or suspect classification, to uphold the classification the State must show more than some tenable, rational justification for the statute or "a mere . . . rational relationship" [51] between the purpose to be served by the statute and the classification. In such cases, traditional standards of equal protection are inapplicable,[52] and in reviewing state statutes or regulations under the "special scrutiny" test the Court may properly invalidate the legislation because the legislature has disregarded existent less onerous alternatives which could have achieved the same purpose without such deleterious effect upon basic rights.[53]

A third consideration which has influenced courts to review state acts with "special scrutiny" arises when the law penalizes or harshly affects a class that exercises little control over the political process. Thus, in *United States* v. *Carolene Products Co.*, 304 U.S. 144, 153, n. 4 (1938) this Court noted that:

> [P]rejudice against discrete and insular minorities may be a special condition, which tends seriously to curtail the operation of these political processes ordinarily to be relied upon to protect minorities, and, which may call for a correspondingly more searching judicial inquiry (citations omitted).

Similarly, Judge Skelly Wright, in *Hobson* v. *Hansen*, 269 F.Supp. 401, 507, 508 (D.D.C. 1967), *aff'd sub nom.*,

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[51] *Shapiro* v. *Thompson, supra* at 634.

[52] *Id.*

[53] *See, Developments in the Law—Equal Protection*, 82 Harv. L. Rev. 1065, 1122 (1969) and cases cited therein, and p. 66 *infra*.

408 F.2d 175 (D.C. Cir. 1969) stated the necessity for careful scrutiny when reviewing legislation adversely affecting disadvantaged minorities.

> The explanation for this additional scrutiny of practices which, although not directly discriminatory, nevertheless fall harshly on such groups relates to the judicial attitude toward legislative and administrative judgments. Judicial deference to these judgments is predicated in the confidence courts have that they are just resolutions of conflicting interests. This confidence is often misplaced when the vital interests of the poor and of racial minorities are involved. For these groups are not always assured of a full and fair hearing through the ordinary political processes . . . because of the abiding danger that the power structure . . . may incline to pay little heed to even the deserving interests of a politically voiceless and invisible minority. These considerations impel a closer judicial surveillance and review of administrative judgments adversely affecting racial minorities, and the poor, than would otherwise be necessary.

The maximum grant regulation, by infringing upon basic and fundamental rights, containing a suspect classification, and adversely affecting a disadvantaged political minority requires "special scrutiny" and can only be upheld if necessary to achieve a "compelling" governmental interest. Because it advances no such interest the maximum grant regulation must fall as violative of equal protection.

2. *The Maximum Grant Regulation Infringes Upon Basic and Fundamental Rights*

a. *The Right to Procreate and Marital Privacy*[14]

In *Skinner* v. *Oklahoma*, 316 U.S. 535, 541 (1942), Justice Douglas, writing for the majority, referred to the right of procreation within a marriage as "one of the basic civil rights of man," being "fundamental to the very existence and survival of the race."[15] Applying a "strict scrutiny" test the Court invalidated, as violative of equal protection, a state statute providing for sterilization of some criminals while leaving unaffected criminals within the same class. The critical defect in the state law was its underinclusive classification.[16]

The Court in *Griswold* v. *Connecticut*, 381 U.S. 479 (1965) insured further protection for the marital relationship by holding that personal decisions concerning sexual relations and control of family size were insulated, by a zone of privacy from governmental interference. Justice Douglas, writing the Opinion of the Court, said,

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[14] *See*, p. 31 to p. 33, *supra*.

[15] In an earlier case, this Court held that the Fourteenth Amendment guarantees the right "to marry, establish a home and bring up children . . ." *Meyer* v. *Nebraska*, 262 U.S. 390, 399 (1922). *See, Loving* v. *Virginia*, 388 U.S. 1, 12 (1966).

[16] At least three State Supreme Courts had, prior to *Skinner* v. *Oklahoma*, *supra*, ruled invalid statutes providing for the sterilization of some institutionalized persons holding that, in light of the broad purposes of the statutes (to prevent procreation by the "genetically" insane), the classifications contained therein were defectively underinclusive since insane persons outside institutions were not included within the scope of the classification. *In Re Thompson*, 169 N.Y.S. 638 (Sup. Ct. 1918); *Haynes* v. *Lapeer, Circuit Judge*, 201 Mich. 138 (Sup. Ct. 1918); *Smith* v. *Board of Examiners*, 85 N.J.L. 46 (Sup. Ct. 1913).

> The present case, then, concerns a relationship lying within the zone of privacy created by several fundamental constitutional guarantees. And it concerns a law which . . . seeks to achieve its goals by means having a maximum destructive impact upon that relationship. Such a law cannot stand in light of the familiar principle, so often applied by this Court, that a "governmental purpose to control or prevent activities constitutionally subject to state regulation may not be achieved by means which sweep unnecessarily broadly and thereby invade the area of protected freedoms" (citation omitted).
>
> *Griswold* v. *Connecticut*, 381 U.S. 479 at 485.[87]

Justice Douglas cryptically pointed to the First Amendment (more particularly the promise of freedom of association) as a primary source of the guarantee of privacy for the marital relationship when he concluded:

> We deal with a right of privacy older than the Bill of Rights, older than our political parties, older than our school system. Marriage is a coming together for better or for worse, hopefully enduring, and intimate to the degree of being sacred. It is an *association* that promotes a way of life, not causes; a harmony in living, not political faiths; a bilateral loyalty, not commercial or social projects. Yet, it is an *association*

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[87] Justice Goldberg concurring (joined by Chief Justice Warren and Mr. Justice Brennan) described the right to privacy as a "fundamental personal right, emanating 'from the totality of the Constitutional scheme under which we live.'" *Griswold* v. *Conn.*, *supra*, at 494. *See, Time, Inc.* v. *Hill*, 385 U.S. 374, 415 (1966), where Justice Fortas, dissenting, stated that "[p]rivacy, then, is a basic right."

for as noble a purpose as any involved in our prior decisions (emphasis added).

*Griswold* v. *Conn., supra,* at 486.[58]

*Griswold* and *Skinner,* therefore, establish, as fundamental and basic rights, the right to marital privacy[59] and uncoerced family planning. The cases further establish as the appropriate standard of equal protection the "special scrutiny" or "compelling interests" test (*see,* p. 32 *supra*) where interference with marital privacy occurs. The state of Maryland is seriously infringing and encroaching upon these rights by conditioning public assistance upon the surrender, by parents with large families, of these personal rights and therefore, the special scrutiny test is appropriate in this case.

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[58] Commentators have noted the significance of *Griswold* in assuring that decisions as to family size must be protected from governmental interference.

> The constitutional right of privacy in the United States encompasses protection of the family relationship; and the *Griswold* decision indicates that, absent a compelling and overwhelming public interest, the governmental authorities may not compel the determination of family size. Kutner, *Due Process of Family Privacy,* 28 U. Pitt. L. Rev. 597, 615 (1967).
>
> That the right of spouses to be free from governmental coercion in their decisions as to family size (large or small) and method of carrying out the decisions is of fundamental importance cannot be denied. (Footnote omitted.) [S]erious constitutional questions would be involved if . . . coercion [by welfare officials against recipients to compel limitation of family size] and invasion of privacy could not be adequately protected against. Sirilla, *Family Planning and the Rights of the Poor,* 13 Catholic Lawyer, 42, 45 and 49 (1967).

*See also, Welfare's Condition X,* 76 Yale L.J. 1222, 1232-33 (1967).

[59] *See, Cotner* v. *Henry,* 394 F.2d 873 (7th Cir. 1968) confirming and protecting this right.

b. *The Right to Life*

In their often cited dissent Mr. Justice Field and Mr. Justice Strong, in the case of *Munn* v. *Illinois*, 94 U.S. 113, 142 (1876), defined the meaning of the term "life" as used in the Fourteenth Amendment. They stated:

> By the term 'life', as here used, something more is meant than mere animal existence. The inhibition against its deprivation extends to all those limbs and facilities by which life is enjoyed. • • • The deprivation not only of life, but of whatever God has given to everyone with life, for its growth and enjoyment, is prohibited by the provision in question, if its efficacy be not frittered away by judicial decision.

The maximum grant provision strikes at this most basic right of all, the right to life itself. It allows the Department of Public Welfare to deny any family consisting of more than six persons minimal subsistence that the Department has itself, in determining the standard of need, defined to be necessary to life.

The tragic effect of the denial of the minimal subsistence benefit necessary for life was recently recognized in the report of the President's National Advisory Commission on Civil Disorders. In recognizing that the national average grant for welfare recipients was well below the poverty subsistence level of $3,335 for an urban family of four, the Commission reported the effect of this inadequacy. It quoted the Advisory Council of Public Welfare, in stating that these inadequacies:

> • • • are themselves a major source of such social evils as crime and juvenile delinquency, mental illness,

> illegitimacy, multi-generational dependency, slum environments, and the widely deplored climate of unrest, alienation, and discouragement among many groups in the population. *Report of the National Advisory Commission on Civil Disorders*, Bantam Books, 1968, p. 460.

This recognition of poverty as a cause and source of other deprivations is critically important. Without the bare necessities of life the full and active exercise of guaranteed rights, such as freedom of speech and association, is curtailed.[40] As a result of indigency many have not participated in the political processes. *United States* v. *Carolene Products Co.*, 304 U.S. 144, 153, n. 4 (1938); *Hobson* v. *Hansen*, 269 F.Supp. 401, 507 (D.C.D.C. 1967), *aff'd sub nom.*, 408 F.2d 175 (D.C. Cir. 1969).

It is indeed the purpose of the welfare system "to protect the fundamental rights of children to the sustenance and stable family life which will enable them to develop into full members of our society capable of exercising their rights and responsibilities under the United States Constitution". *Rosado* v. *Wyman*, 414 F.2d 170, 185 (2d Cir. 1969).

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[40] This proposition is borne out in the instant cases. Appellees are constantly in debt and unable to supply their children with the basic necessities of life. The children of Appellees occasionally must miss school because they are without adequate clothing. Appellees Junius and Jeanette Gary furthermore, are forced to suffer through winter months without heat and light because of their inability to pay gas and electric bills on time. Their AFDC grant does not even provide sufficient money to allow them to participate in the Food Stamp Program which would make available to their children more nutritious food in greater quantity. This last deprivation is especially critical in light of recent evidence indicating that inadequate nutrition in early childhood can cause irreversible brain damage. *Hunger, U.S.A.* (1968). *See*, A. 71-74.

When a legislative classification has the effect of placing such additional burdens on a class of persons characterized by its extreme poverty and a practical inability to escape from problems which the classification creates, strict scrutiny of the classification is appropriate. *Harper* v. *Board of Elections*, 383 U.S. 663 (1966); *Griffin* v. *Illinois*, 351 U.S. 12 (1956); *Douglas* v. *California*, 372 U.S. 353 (1963).

Furthermore, as discussed previously, when legislation encroaches upon fundamental rights, strict scrutiny is appropriate (*see*, pp. 35 to 39, *supra*). Fundamental rights include those rights basic to survival and well-being whether or not they are specifically expressed in the Constitution. *Harper* v. *Board of Elections*, 383 U.S. 663 (1966); *Skinner* v. *Oklahoma*, 316 U.S. 535 (1942); *Griswold* v. *Connecticut*, 381 U.S. 479 (1965); *Shapiro* v. *Thompson*, 394 U. S. 618 (1969). Certainly, in any hierarchy of rights the right to bare necessities of life and minimal physical well-being ranks as high as the right to procreate, privacy, vote, marry or travel.[41] Indeed, as mentioned previously, these rights presuppose the existence of a basic right to life and are dependent upon such a right. Any right "preservative of other basic civil and political rights" must be considered fundamental and any alleged infringement of this right "must be carefully and meticulously scrutinized".[42]

This Court, in *Shapiro* v. *Thompson*, 394 U.S. 618, 627 (1969) stated the vital importance of welfare aid, "upon

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[41] In *Bell* v. *Maryland*, 378 U.S. 226, 255 (1964), Mr. Justice Douglas rhetorically asked,

> Is the right of a person to eat less basic than his right to travel . . . ?

[42] *Reynolds* v. *Sims*, 377 U.S. 533, 562 (1963).

which may depend the ability of the families to obtain the very means to subsist—food, shelter, and other necessities of life".[*]

Other courts have indicated their belief that rights of such crucial importance can only be infringed upon a showing, by the government of "compelling interest." In *Rothstein* v. *Wyman*, 303 F.Supp. 339 (S.D.N.Y., 1969) the Court stated:

> Where legislative classifications . . . operate to the detriment of a disadvantaged minority, they are "closely scrutinized and carefully confined," . . . and will be upheld only if it is necessary and not merely rationally related, to the accomplishment of a permissible state policy . . . The standard has more recently been described in even stricter terms as one making constitutionality depend upon whether the statute "promotes a *compelling* state interest" . . .
>
> Receipt of welfare benefits may not at the present time constitute the exercise of a constitutional right. But among our Constitution's expressed purposes was the desire to "insure domestic tranquility" and "promote the general welfare". Implicit in these phrases are certain basic concepts of humanity and decency. One of these, voiced as a goal in recent years by most responsible governmental leaders, both federal and state, is the desire to insure that indigent, unemployable citizens will at least have the bare minimums required for existence, without which our expressed fundamental constitutional rights and liberties frequently cannot be exercised and therefore become

[*] *See*, dissenting opinion of Mr. Justice Harlan at 660-661.

meaningless. Legislation with respect to welfare assistance, therefore, like that dealing with public education, access to public parks or playgrounds, or use of the mails, deals with a critical aspect of the personal lives of our citizens whether such assistance be labelled a "right," "privilege" or "benefit". *See, Sherbert* v. *Verner*, 374 U.S. 398, 404 (1962). Its importance is magnified by the defenseless and disadvantaged state of the class of citizens to which it relates, who are usually less able than others to enforce their rights. It can hardly be doubted that the subsistence level of our indigent and unemployable aged, blind and disabled involves a more crucial aspect of life and liberty than the right to operate a business on Sunday or to extract gas from subsoil. We believe that with the stakes so high in terms of human misery the equal protection standard to be applied should be stricter than that used upon review of commercial legislation and more nearly approximate that applied to laws affecting constitutional rights. (Footnotes and citations omitted).

Similarly, in *Harrell* v. *Tobriner*, 279 F.Supp. 22, 31 (D.D.C.—1967) the Court said,

> This natural movement toward assistance where assistance is needed, and the human terms of the problem, permit the court somewhat greater latitude in deciding that this difference in the treatment of those in our midst who are in need amounts to unequal protection of laws than if the treatment were with respect to some matter less critical to their living conditions.

The right to life, guaranteed by the Fourteenth Amendment, recognizes that a man is not a mere animal but a

political and social creature as well. *Munn* v. *Illinois, supra* (dissenting opinion). The maximum grant regulation undermines this basic right, placing in the balance, "all that makes life worth living". *Ng Fung Ho* v. *White*, 259 U.S. 276, 284 (1922).

### 3. *By Differentiating Among Children Because of Family Size the Maximum Grant Regulation Contains a Suspect Classification*

The *status* of a child, as the fifth, sixth, etc., member of a family, provides no reason for denying him a statutory entitlement. This Court, very recently, established this principle when it held unconstitutional in *Levy* v. *Louisiana*, 391 U.S. 68 (1969) a state statute disallowing an illegitimate child's suit for the wrongful death of its mother. The Court reached its decision without expressly determining whether there was a rational connection between the statute and a valid state purpose (discouraging illegitimate births) by applying the special scrutiny test. The Court explained its use of this standard of judicial review by stating:

> [W]e have been extremely sensitive when it comes to basic civil rights (citations omitted) and have not hesitated to strike down an invidious classification even though it had history and tradition on its side. (Citations omitted.) *The rights asserted here involve the intimate familial relationship between a child and his own mother. Levy* v. *Louisiana*, 391 U.S. 68 at 71. (Emphasis added.)

The Court, speaking through Mr. Justice Douglas, concluded that:

> [I]t is invidious to discriminate against them [children] when no action, conduct, or demeanor of theirs is possibly relevant to the harm that was done the mother. *Levy* v. *Louisiana*, *supra* at 72.

The clear mandate of *Levy* is that a classification based upon a child's *status* (be it illegitimacy or position in a large family) will be constitutionally suspect requiring a heavy burden of justification by the State. The mere fact of being a young child in a large family is a "neutral fact constitutionally, an irrelevance like race, creed or color," *Edwards* v. *California*, 314 U.S. 160, 184-85 (1941) (Justice Jackson concurring), and the State should not be allowed to treat these individuals as "non-persons." *Levy* v. *Louisiana*, *supra*.

## II.

**The Maximum Grant Regulation, by Disregarding the Needs of Some of the Children of Large Families and in Effect Treating the Family as the Proper Unit of Assistance Provides a Powerful Incentive to Fragment the Family Unit, Violating Two Fundamental Purposes of the Aid to Families With Dependent Children Program, Title IV of the Social Security Act of 1935.**

The duty of the Court below was to reach and decide the question of statutory conformity before deciding the constitutional question. *Rosenberg* v. *Fleuti*, 374 U.S. 449, 451 (1962). The Court in its first opinion found a violation of Section 402 (a) (9) (now 402 (a) (10)) of the Social Security Act, as amended, 42 U.S.C.A. § 602 (a) (9) (now 602 (a) (10)), and of the general purpose of the Act aimed at strengthening family life, 42 U.S.C.A. § 601. The reasoning of the Court below in its second opinion confirms

and supports its original finding of statutory violations, despite its reluctance to make such a finding.

The Appellant State of Maryland in its brief has completely neglected to give this Court the benefit of its own position in regard to the statutory violation *vel non* of the maximum grant regulation here under attack. It has instead contented itself with rephrasing and quoting in large part its Jurisdictional Statement, directed to the constitutional arguments, in a sociological setting. Appellees feel it important to thoroughly present the statutory base of the Social Security Act of 1935 as it applies to this case, since it is traditional that this Court's disposition of cases be made on statutory rather than constitutional grounds, in the absence of insurmountable problems of statutory construction. *King* v. *Smith*, 392 U.S. 309, 334 (Concurring Opinion of Mr. Justice Douglas).

The central purpose of the AFDC Program, 42 U.S.C. §§ 601-609, is to provide financial assistance, in accordance with computed need, to each dependent child. Congress intended this assistance to achieve two related objectives. It was intended to insure that no child is denied basic necessities of life because of his parents' poverty. Secondly, assistance, under the AFDC Program, was envisioned as a means of strengthening and improving the child's family life and home environment. The existence of a maximum grant regulation effectively frustrates the achievement of both these objectives in the cases of Appellees and the class they represent.

### A. A Fundamental Purpose of the AFDC Program Is to Strengthen Family Life

The Federal and State statutes and regulations creating and implementing the AFDC Program declare, as an essen-

tial purpose of AFDC, the encouragement of a stable and cohesive family unit.

The Social Security Act of 1935, as amended, states that an objective of the Act is:

> "[*T*]*o help maintain and strengthen family life* and to help such parents or relatives to attain or retain capability for the maximum self-support and personal independence *consistent with the maintenance of continual parental care and protection* . . . "[64] (emphasis added). 42 U.S.C. § 601.

The United States Department of Health, Education and Welfare defines, more specifically, what is meant by the phrase "Strengthen Family Life":

> Strengthening family life means sustaining and increasing the ability of parents to carry their parental responsibilities in the care, protection, and support of their children; and to sustain and increase the capacities of children to carry their appropriate role in total family life, to the end that children may have a home life conducive to healthy, physical, emotional, and social growth and development. Families have the right and responsibility to provide for adequate health care, education, and vocational training in accordance with

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[64] The administrative interpretation of basic federal policy is set forth in Regulation 3401, Part IV of the *Federal Handbook of Public Assistance Administration*:

> To live in the family to which he belongs is the foundation of a child's security. The public has an interest and an obligation in sustaining the contribution which parents and immediate family make to the development of a child. Financial inability to meet a child's needs, therefore, should not be allowed to force a parent to surrender responsibility for bringing up the child.

the capacities of their children; and to provide for their participation in community life. HEW, HANDBOOK OF PUBLIC ASSISTANCE ADMINISTRATION, Pt. IV, § 4223.1.

In Maryland, the State statute authorizing State participation in the AFDC Program contains a similar unequivocal declaration of purpose.

> • • • It is hereby declared that the primary purpose of aid given under this subtitle is the *strengthening of family life through services and financial aid,* whereby families may be assisted to maximum self-support in homes meeting the requirements of child care established by law in this State • • • . (Emphasis supplied.) *Annotated Code of Maryland,* Article 88A, § 44A (1957).

This Congressional and State decision to actively encourage, by the AFDC Program, poor families to remain intact and together reflects a judgment that poverty does not disqualify people as parents and is best combatted by the promotion of family unity. Keeping parents and children together in their own homes, rather than institutionalizing the children of the poor, it was decided, "is the least expensive and altogether most desirable method for meeting the needs of these [poor] families that has yet been devised".[48]

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[48] Senate Report No. 628, 74th Congress, 1st Sess. (May 13, 1935). The initial House version of the Social Security Act contained a similar declaration of philosophy stating that "it has long been recognized in this country that the best provision that can be made for families of this description [without a potential breadwinner] is public aid with respect to dependent children *in their own homes.*" House Report No. 615, 74th Congress, 1st Sess. (1935). (Emphasis supplied.)

The AFDC Program then, is "designed to hold broken families together".[66] In *Lampton* v. *Bonin*, 299 F.Supp. 336, 340 (E.D. La. 1969) the Court emphatically recognized the fostering of family unity as the *primary* purpose of AFDC.

> [T]he primary purpose of ADC [AFDC] appropriations, unlike appropriations for the other three categories [of public assistance], is not simply to enable the States to furnish assistance to needy children. True, these funds are to be used for this purpose, but the enabling of States to furnish assistance to needy children is only a means to the real primary purpose; 'the purpose of encouraging the care of dependent children in their own homes or in the homes of relatives . . . to help maintain and strengthen family life . . .'. It is not enough that the dependent children be given simply financial assistance; the chief purpose of the Social Security Act section on dependent children is to see that such children are raised by their parents or relatives in a family atmosphere.[67]

The maximum grant regulation, rather than encouraging family cohesiveness, fosters the dissolution and fragmentation of large families. The actual economic advantage to be gained by Appellees' division of their families has been discussed previously (*see*, p. 28 and n. 26 *supra*). The Parties Stipulations of Fact in this case describe Appel-

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[66] Statement made by Senator Harrison of the Senate Committee on Finance during Senate debate on the House Ways and Means Committee proposals for Title IV, 79 *Cong. Rec.* 9269 (1935). *See also*, lower Court's Initial Opinion, A. 93.

[67] Accord, *Jefferson* v. *Hackney*, —— F.Supp. ——, Civil Action No. 3-3012-B (N.D. Tex. 1969).

lees' daily financial struggle (A. 71-74) and the excessive pressures caused by the maximum grant regulation which force Appellees to consider family dissolution as a means of providing their families with the necessities of life (A. 73, 74).

It was these economic realities that led the lower Court to conclude, in its initial opinion, that:

> [T]he maximum grant regulation provides a powerful economic incentive to break up large families by placing 'dependent children' . . . in the homes of persons included in the class of eligible relatives. If this is done, the pernicious effect of the maximum grant regulation is avoided, but the purpose of keeping them in their own home is defeated. Initial Opinion of lower Court, A. 94, 95.

The lower Court, thus correctly concluded, in its initial opinion, that the maximum grant regulation violated "part of the basic philosophy underlying AFDC" (A. 93). In its second opinion the Court, while not deciding whether the regulation was in conflict with the Social Security Act, did not modify its original finding that the maximum encouraged family breakup, and Appellees contend that the lower Court's initial conclusion was correct; the maximum is in direct conflict with the Social Security Act of 1935.

This contention finds considerable support in two decisions, both rendered by three-judge District Courts subsequent to the lower Court's second opinion in this case.

In *Westberry, et al.* v. *Fisher, et al.*, 297 F.Supp. 1109, 1114 (D. Me. 1969) the Court stated:

> In its standard schedule of need, the State does not suggest that the need of a seventh or eighth dependent

child is any less than that of a third or a fourth dependent child. Yet the effect of the two maximum regulations is to deny a dependent child, because he is the seventh or eighth (or any subsequent number), the payment which the State has found necessary if he is to live in 'decency and health'. The regulations thus create a class of needy children who receive a lesser amount of public assistance than do other children who are in all respects similarly situated, except they live in smaller families. *Such a result cannot be reconciled with the purposes of the AFDC program.* (Emphasis supplied.)

While the Court in *Westberry* v. *Fisher, supra,* did not base their opinion on the statutory violation (holding the maximum unconstitutional under the Fourteenth Amendment) the United States District Court for the District of Arizona did specifically find that Arizona's maximum grant regulation contravened the purposes of the Social Security Act, stating:

> Actually, the maximum grant statutes now enacted provide an economic club aimed at breaking up the family unit and thus frustrating and defeating the stated purpose of Congress in enacting the legislation designed to aid needy, dependent children and families with such dependent children . . . Under such provisions, the obvious pressures would be to split the family into units of threes in order to gain the fullest amount of assistance under the maximum grant and statutes. This would be contrary to the federal statutes and therefore invalid. *Dews* v. *Henry, and Inclan* v. *Department of Public Welfare,* 297 F.Supp. 587, 592 (D. Ariz. 1969).

Because Maryland's maximum grant regulation strongly induces Appellees, and the class they represent to dissolve their families, it directly contravenes 42 U.S.C. § 601, as the Court below correctly concluded in its initial opinion (A. 94, 95). This Court should similarly hold the maximum void as violative of the Social Security Act.[68]

B. A Fundamental Purpose of the AFDC Program Is to Provide Assistance to All Eligible Individuals

The maximum grant regulation contravenes the express purposes of the AFDC Program in another fundamental sense. It disregards the computed needs of the fifth, sixth, etc. child or children in families of seven or more members and, thus, treats the family, rather than the individual needy child, as the appropriate unit for determining the amount of assistance under the AFDC Program. Ignoring the computed need of dependent children in this way can't be reconciled with 42 U.S.C. § 602(a)(10)[69] which requires that:

> A State plan for aid and services to needy families with children must provide . . . that all individuals wishing to make application for aid to families with dependent children shall have opportunity to do so, and that aid to families with dependent children shall be furnished with reasonable promptness to *all eligible individuals*. (Emphasis added.)

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[68] *See, Welfare's Condition X*, 76 Yale LJ 1222, 1232-1233 (1967) wherein it is stated that "[T]o the extent that the rules [maximum grant regulations] impel large families to farm out children to other relatives, they frustrate the [42 U.S.C.] Sec. 601 purpose of maintaining 'continuing parental care and protection' ".

[69] Previously 42 U.S.C. 602(a)(9) and referred to as such in the case below.

If indeed the phrase "all eligible individuals" was meant to refer specifically to "all individuals wishing to make application", as the State argued below, Congress would have made this abundantly clear by simply making its second reference to "such eligible individuals" or to "said eligible individuals" as normal usage would dictate. The Act, however, quite pointedly says "*all* eligible individuals", which should certainly be interpreted as the means Congress used to emphasize its intent to benefit all eligible children under the AFDC Program and not as a mere lapse by Congress into redundancy."[10]

This viewpoint is further reinforced by the 1967 Amendments to the Social Security Act, Public Law 90-248, 90th Congress, H.R. 12080. While not specifically passing upon the matter of meeting the full needs of welfare recipients, the amendment does contain implicit recognition that the individual is the proper unit of assistance in that it requires, in Section 402(a)(23) (42 U.S.C. 602(a)(23)), that the amounts used by the State to determine the needs of *individuals* "• • • will have been adjusted to reflect fully changes in living costs, since such amounts were established • • •". (Emphasis added.)"[11]

This Court, in *King* v. *Smith*, 392 U.S. 309, 313 (1967) gave judicial recognition to this Congressional intention

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[10] This Court should not adopt an interpretation of §602(a)(10) which renders one part a mere redundancy. *Jarecki* v. *E. D. Searle & Co.*, 367 U.S. 303 (1961).

[11] It is also relevant that the Federal Government's share of the AFDC Budget is measured by computing its contribution to *individual* recipients; five-sixths (5/6) of the first eighteen (18) dollars with a ceiling for Federal participation set at thirty-two (32) dollars a month per recipient. 42 U.S.C.A. §603 (1969 Cum. Annual Pocket Part).

to supply AFDC assistance to individual children rather than a more comprehensive unit, stating:

> The category singled out for welfare assistance by AFDC is the '*dependent child*' who is defined in Section 406 of the Act, 49 Stat. 629, as amended, 42 U.S.C. § 606(a) (1964), as an age-qualified '*needy child*' • • •. (Emphasis added.)

*King* v. *Smith*, *supra*, establishes that a child, to qualify for assistance under the AFDC Program, need only be needy and dependent (within the meaning of 42 U.S.C. § 606(a) (1964). Additional eligibility requirements, unrelated to need, are statutorily impermissible.

A recent decision rendered by a three-judge District Court reaffirmed the principle established in *King* v. *Smith*, *supra*. In *Doe* v. *Shapiro*, 302 F.Supp. 761 (D. Conn. 1969) a Connecticut Welfare regulation requiring, as a condition of AFDC eligibility for illegitimate children, that the mother disclose the name of the child's father, was held to constitute an unwarranted eligibility requirement, unrelated to the need of a dependent child. As such it violated the mandate of 42 U.S.C. § 602(a)(10) that assistance be furnished *all eligible individuals*. The Court stated that:

> Congress has determined that the primary and inescapable obligation of participating states is to provide financial assistance to 'needy' and 'dependent' children. The protection of such children is the paramount goal of AFDC (citation omitted).[11]

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[11] *Accord*, *Westberry* v. *Fisher*, 297 F. Supp. 1109, 1112, n. 6 (D. Me. 1969).

The maximum grant regulation, like the regulation invalidated in *Doe* v. *Shapiro, supra,* also "imposes an additional condition of eligibility not required by the Social Security Act," *Doe* v. *Shapiro, supra,* at 764, that a child, to be eligible for AFDC assistance, must be fortunate enough to have been born no later than the fourth or fifth child in a family.

Especially frivolous, after *King* v. *Smith,* 392 U.S. 309 (1967) is Appellants' contention that a destitute child may be denied assistance, notwithstanding his status as a needy, dependent child, because of a *parental* decision to have a large family. As in *King* v. *Smith, supra,* this Court should not accept the view:

> [T]hat Congress, at the same time that it intended to provide programs for the economic security and protection of *all* children, also intended arbitrarily to leave one class of destitute children entirely without meaningful protection . . . Such an interpretation of Congressional intent would be most unreasonable, . . .". *King* v. *Smith,* 392 U.S. 309 (1967).

The Court concluded that the purpose of the AFDC program was to provide economic security and services to needy children who lost the support of a "breadwinner". Parents of a large family are, because of the maximum, required to completely ignore the needs of children beyond the sixth individual in a family, which is humanly inconceivable, or to spread already inadequate resources thinner. The effect of the maximum grant regulation is, thus, the same as the effect of the "man in the house rule" condemned in *King* v. *Smith, supra,* to arbitrarily leave one class of destitute children entirely without meaningful protection.

This Court's decision in *King* v. *Smith*, 392 U.S. 309 (1967), indicates that the availability of existing alternatives already protecting valid state interests is relevant in deciding whether a state regulation, harshly affecting recipients while allegedly promoting some state interest, is consistent with the purposes and philosophy of the Social Security Act.

Congress has provided the states, in recent amendments to the Social Security Act, with numerous statutory alternatives by which they may accomplish the purposes *allegedly* served by the maximum grant regulation. Thus the State's legitimate interest in encouraging employable recipients to work and in discouraging desertion is adequately protected.[73] And, as mentioned previously,[74] the State of Maryland may utilize existent provisions of the Social Security Act to provide family planning advice and services to parents with large families. It is the State's obligation to employ these "rehabilitative measures" to accomplish legitimate purposes "rather than measures that punish dependent children" since "protection of . . . [needy, dependent] children is the paramount goal of AFDC." *King* v. *Smith*, 392 U.S. 309, 325 (1967).

### C. Neither Congress Nor the United States Department of Health, Education and Welfare Has Approved Maryland's Maximum Grant Regulation.

The Court below decided, quite properly, not to infer Congressional approval of Maryland's Maximum regulation from the general reference to maximums contained in Sec-

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[73] *See*, p. 21 *supra*, and pp. 64, 65, *infra*, for a full discussion of these alternatives.

[74] *See* p. 33, n. 41.

tion 402(a)(23) of the Social Security Act, as amended (42 U.S.C. § 602(a)(23)).[18] This section provides that a state AFDC plan must:

> provide by July 1, 1969, the amounts used by the State to determine the needs of individuals will have been adjusted to reflect fully changes in living costs since such amounts were established, *and any maximums that the State imposes on the amount of aid paid to families will have been proportionately adjusted* (emphasis supplied).

Such a vague and general acknowledgement of the existence of "maximums", which take many forms and have various effects, should not be construed to bestow Congressional approval upon Maryland's maximum, when that maximum so seriously frustrates the basic purposes of the Social Security Act, strengthening family life and providing AFDC assistance to needy individuals. (*See,* Second Opinion, A. 251.) This Court has stated that:

> We believe it fundamental that a section of a statute should not be read in isolation from the context of the whole act, and that in fulfilling our responsibility in interpreting legislation, 'we must not be guided by a single sentence or member of a sentence, but [should] look to the provisions of the whole law, and to its object and policy.'
>
> *Richards* v. *United States,* 369 U.S. 1, 11 (1961).

Construing § 602(a)(23) to mean Congress specifically approved Maryland's maximum would put § 602(a)(23) in conflict with 42 U.S.C. § 602(a)(10), providing for as-

[18] Second Opinion, A. 251.

sistance to needy individuals, and 42 U.S.C. § 601, declaring a purpose of the Social Security Act to be the strengthening of family life. This would violate the well-accepted canon of statutory construction requiring inconsistent provisions of a statute to be harmonized if possible. *Federal Power Comm'n* v. *Panhandle Eastern Pipe Line Co.*, 337 U.S. 498 (1948); *Hattaway* v. *United States*, 304 F.2d 5 (5th Cir. 1962).

It is also apparent from the face of § 602(a)(23), that it could reasonably be interpreted as representing *disapproval* of maximums by Congress rather than approval. This is the interpretation given to this section by one court that dealt at length with § 602(a)(23). In *Lampton* v. *Bonin*, —— F.Supp. ——, No. 68-2092-E (E.D.La. July 15, 1969) a three-judge Court suggested that the intended effect of § 602(a)(23) was to induce the states to eliminate the use of arbitrary maximums in favor of a more equitable form of decreasing welfare expenditures.

Interpreting § 602(a)(23) in this way is supported by this Court's decision in *Shapiro* v. *Thompson*, 394 U.S. 618 (1968). In *Shapiro* the Court interpreted 42 U.S.C. § 602 (b), which provided that the Secretary of H.E.W. should not approve a state plan requiring, as a condition of eligibility, that recipients reside in the state for *more* than one year, *not* as a declaration of Congressional approval of a one-year state residency requirement but as a "directive to curb hardships resulting from lengthy residence requirements." *Shapiro* v. *Thompson*, 394 U.S. 618, 639 (1968).

Similarly, 42 U.S.C. § 602(a)(23) should be viewed as a means of ameliorating the harshness and arbitrariness caused by state maximums.

Furthermore, assuming, *arguendo*, that § 602(a)(23) contains Congressional approval of Maryland's maximum grant regulation, it still must withstand, as it cannot,[16] a Constitutional challenge under the Equal Protection Clause. "Congress may not authorize the States to violate the Equal Protection Clause." *Shapiro* v. *Thompson*, 394 U.S. 618, 641 (1969).

H.E.W., like Congress, has given only collateral recognition to Maryland's grant regulation and has never issued any decision, regulation or policy statement dealing directly with the validity of the regulation. (*See*, lower Court's Second Opinion, A. 240.) H.E.W.'s sole contact with the regulation has occurred with its purely ministerial "acceptance for incorporation" of Maryland's maximum grant regulations as part of Maryland's complete AFDC plan, and its issuance of a booklet and policy statement acknowledging the existence of the regulation. (*See*, the lower Court's comment in this regard, Second Opinion, A. 240.) These ambiguous actions should not be construed as administrative affirmation of the regulation especially in light of H.E.W.'s forceful adherence to the policies of promoting AFDC family unity and fully meeting individuals' computed needs. (See p. 55 and n. 36 *supra*.) Furthermore, H.E.W. expressly stated, in their Brief in *Lampton* v. *Bonin*, 299 F.Supp. 336 (E.D.La., 1969) that:

> [T]he use of dollar maximums adds an element of arbitrariness. Family maximums in particular, result in patently different treatment of individuals."[17]

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[16] *See* constitutional argument, *supra*.

[17] Brief of Robert H. Finch, Secretary of Health, Education, and Welfare as Amicus Curiae, 18.

At any rate, it is clear that administrative action is only a "helpful" guide to statutory interpretation. Ultimately, construction and interpretation of ambiguous statutes is a judicial function. *Volkswagen Werks* v. *FMC*, 390 U.S. 261, 272 (1968); *Davies Warehouse Company* v. *Bowles*, 321 U.S. 144, 156 (1944); *Fishgold* v. *Sullivan Drydock & Repair Corporation*, 154 F.2d 785, 790 (2nd Cir. 1946), *Aff'd*, 328 U.S. 275 (1946); *Folsom* v. *Pearsall*, 245 F.2d 562, 564-65 (9th Cir. 1957); *Commissioner* v. *Winslow*, 113 F.2d 418, 423 (1st Cir. 1940). As the court below correctly concluded,

> In no event is a court 'compelled to follow an administrative interpretation that it regards as inconsistent with the legislative purpose of the provision in issue. *In Re Petition of Chin Thlott Har Wong*, 224 F. Supp. 155, 165 (S.D.N.Y. 1963). (Lower Court's Second Opinion, A. 242.)

In summary, the District Court's finding in its First Opinion, not contradicted in its Second Opinion, that the regulation violated the fundamental purposes of the AFDC program, 42 U.S.C. 601 *et seq.*, was correct and should provide the basis for a finding by this Court that the regulation is invalid.

## Conclusion

It is highly questionable that the purposes belatedly ascribed to the maximum grant regulation, raised for the first time by Appellants on reargument, were actually the purposes prompting the regulation and that any other consideration, besides governmental economizing, led to the regulation.[18] Assuming, however, that they were indeed the reasons behind the regulation, the maximum regulation

[18] *See* p. 19, n. 11, *supra*.

is so indiscriminate in its scope as to be completely unrelated to either the purpose of the Social Security Act of 1935[79] or the purposes suggested by Appellants. Five courts directly,[80] besides the lower Court in this case, and two courts by way of dicta,[81] have come to this conclusion. All five courts, with only one summary dissenting opinion, have invalidated the maximum grant regulation under traditional criteria of equal protection,[82] hold that family size is a completely arbitrary factor and constitutionally unacceptable reason for denying statutory entitlements to some needy dependent children, while granting them to others.

Because the State is presently implementing and utilizing various provisions of the Social Security Act which achieve the purposes the maximum grant regulation is allegedly intended to accomplish, the regulation has no conceivably rational function.

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[79] [A] statutory discrimination must be based on differences that are reasonably related to the purpose of the Act in which it is found. *Morey* v. *Doud*, 254 U.S. 457, 465 (1967). This is especially true where the purpose of the Act is certain and unambiguous. *Two Guys from Harrison—Allentown, Inc.* v. *McGinley*, 366 U.S. 582 (1961).

[80] *Collins* v. *State Board of Social Welfare*, 248 Iowa 369, 81 N.W. 2d 4 (1957); *Dews* v. *Henry and Inclan* v. *Graham*, 297 F.Supp. 587 (D.Ariz. 1969); *Westberry* v. *Fisher*, 297 F.Supp. 1109 (D.Me. 1969); *Kaiser* v. *Montgomery*, No. 49613, N.D. Cal. (decided Aug. 28, 1969); *Lindsey* v. *Smith*, No. 7636, W.D. Wash. (decided Aug. 20, 1969).

[81] *Metcalf* v. *Swank*, 293 F.Supp. 268 (N.D. Ill. 1968); *Anderson* v. *Burson*, 300 F. Supp. 401 (N.D. Ga. 1969). Also, at least one other state, Louisiana, has voluntarily repealed its maximums "because of serious doubts as to their validity". *Lampton* v. *Bonin*, No. 68-2092-E (E.D.L.A., July 15, 1969).

[82] It is clear that the courts in these cases did consider the purposes of the maximum regulation might serve in addition to that of decreasing welfare expenditures. *See, e.g., Westberry* v. *Fisher*, 297 F.Supp. 1109, 1115, n. 17 (D.Me. 1969).

If the purpose of the regulation is to encourage employment, the regulation is irrelevant since this is presently being accomplished by the implementation of existing provisions of the Social Security Act, the 1967 Amendments (WIN Program), 42 U.S.C. §§ 630-44, which allow an employed recipient to keep a percentage of his salary and provide for employment training and rehabilitation and job placement for recipients who are found to be employable.

If the purpose of the regulation is to discourage desertion, once again the 1967 Amendments to the Social Security Act provide a less onerous method of deterring welfare desertion by employed fathers. Section 402(a), as amended, authorizes federal funds to secure support from deserting fathers through interstate or intrastate prosecution, and to establish a single agency responsible for collecting support payments. 42 U.S.C. § 602(a), as amended, P.L. 90-248, Section 201(a), (1)(C)(17), 81 Stat. 878 (1969). The Amendment refers explicitly to full utilization of the Uniform Reciprocal Enforcement of Support Act (URESA). The problem of intrastate desertion can be curbed through criminal prosecutions for non-support brought under Article 27 Sections 88, 96 of the Annotated Code of Maryland.

If the purpose of the regulation is to prevent parents from having large families this can be accomplished, without such extreme harshness, by utilizing and implementing already existing provisions of the Social Security Act (42 U.S.C.A. § 602) which require, as part of the State's AFDC plan, that the state develop a program to achieve the objective of "preventing or reducing births out of wedlock and otherwise strengthening family life," and provide "in all appropriate cases family planning services . . ." § 402(a)(15) of the Act, 42 U.S.C.A. § 602(a)(15).

Thus, the maximum grant regulation is unconstitutional under the traditional standard of equal protection since it does not effectuate a valid state purpose.

It logically follows that the regulation must also fall under the special scrutiny standard which is appropriate in this case because the maximum grant regulation seriously infringes upon the fundamental rights of a disadvantaged and powerless minority (the right to marital privacy and procreation and the right to life) and because it contains a suspect classification.

This case is thus indistinguishable from *Shapiro* v. *Thompson*, 394 U.S. 618 (1969), where this Court applied the "special scrutiny" test to protect the exercise of a basic right, the right to travel.

The maximum grant regulation, like the residency requirement in *Shapiro*, is unable to survive this standard of judicial review because it promotes no "compelling governmental interest," *Shapiro* v. *Thompson, supra*, and because there are available to the State, less onerous alternatives to accomplish legitimate state purposes. *Sherbert* v. *Verner*, 374 U.S. 398 (1963); *Shapiro* v. *Thompson*, 394 U.S. 618, 637 (1968).[23]

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[23] It was decided long ago, *Schneider* v. *Irvington*, 308 U.S. 147 (1939) and reaffirmed in *Shapiro* v. *Thompson, supra* that fundamental rights are not to be endangered upon grounds of economy. No "compelling state interest" is advanced by the financial savings resulting from the maximum regulation and therefore such a regulation must be "*necessary*, not merely rationally related to the accomplishment of a permissible state policy." *McLaughlin* v. *Florida*, 379 U.S. 184, 196 (1964) (emphasis added). A law can never be "necessary" under this test if there are alternative methods available to accomplish legitimate purposes without encroaching upon fundamental rights. *Sherbert* v. *Verner*, 374 U.S. 398 (1963); *Bates* v. *Little Rock*, 361 U.S. 516 (1960); *Carrington* v. *Rash*, 380 U.S. 89 (1965).

By providing a powerful inducement to split apart the family and because it disregards the needs of individual needy children the State regulation also stands in irreconcilable conflict with the purposes of the Social Security Act as expressed in Sections 401 and 402(a)(10) of the Act as amended. The regulation, in effect, establishes an additional AFDC eligibility requirement, that a child be born into a small family, unrelated to the purposes and objectives of the Social Security Act.

For these reasons this Court should invalidate the maximum regulation as violative of the Social Security Act and affirm the lower Court's decision holding the regulation unconstitutional and enjoining its operation.

Respectfully submitted,

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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1969

**No. 131**

EDMUND P. DANDRIDGE, JR., CHAIRMAN OF THE MARYLAND STATE BOARD OF PUBLIC WELFARE, ET AL.,

*Appellants,*

—v.—

LINDA WILLIAMS, ET AL.,

*Appellees.*

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND

## BRIEF OF *AMICI CURIAE:* THE CENTER ON SOCIAL WELFARE POLICY AND LAW, NATIONAL WELFARE RIGHTS ORGANIZATION, ASSOCIATED CATHOLIC CHARITIES, INCORPORATED, AND SEVEN NEIGHBORHOOD LEGAL SERVICES OFFICES NOW PROSECUTING SIMILAR CASES

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In the

# Supreme Court of the United States

October Term, 1969

**No. 131**

Edmund P. Dandridge, Jr., Chairman of the Maryland State Board of Public Welfare, et al.,

*Appellants,*

—v.—

Linda Williams, et al.,

*Appellees.*

On Appeal from the United States District Court for the District of Maryland

## BRIEF OF *AMICI CURIAE:* THE CENTER ON SOCIAL WELFARE POLICY AND LAW, NATIONAL WELFARE RIGHTS ORGANIZATION, ASSOCIATED CATHOLIC CHARITIES, INCORPORATED, AND SEVEN NEIGHBORHOOD LEGAL SERVICES OFFICES NOW PROSECUTING SIMILAR CASES

### Interest of *Amici Curiae**

The Center on Social Welfare Policy and Law is the specialized welfare law resource of the Legal Services Program of the Office of Economic Opportunity. Affiliated

* Letters from appellants and appellees consenting to the submission of this brief *amici curiae* have been filed with the Clerk.

with the Columbia University School of Law, the Center undertakes research pertaining to the legal rights of welfare recipients and supports OEO-funded legal services programs and other legal organizations through education and assistance in the preparation of important litigation. In this capacity the Center has rendered substantial assistance in most of the cases challenging maximum grants in public assistance. The Center has also appeared before this Court in two arguments this term (*Goldberg* v. *Kelly*, No. 62, and *Rosado* v. *Wyman*, No. 540) and has submitted briefs *amicus curiae* in *King* v. *Smith*, 392 U.S. 309 (1968), *Shapiro* v. *Thompson*, 394 U.S. 618 (1969), *Simmons* v. *Housing Authority of West Haven*, O.T. 1969, No. 81; *Boddie* v. *Connecticut*, O.T. 1969, No. 265; *Sanks* v. *Georgia*, O.T. 1969, No. 266; and *Wheeler* v. *Montgomery*, O.T. 1969, No. 14. The Center also maintains the nation's only comprehensive private collection of state public assistance regulations and manuals. The Center, together with the federally funded legal services programs throughout the nation, has a vital interest in presenting to this Court the full range of issues raised and rules affected by this case.

The National Welfare Rights Organization was formed in 1967 by recipients of public assistance to enable them to learn of their rights and entitlements and to organize and teach individuals in need of financial assistance how to secure public assistance benefits. The membership of the National Welfare Rights Organization includes more than 30,000 households organized in 200 affiliated groups in 70 communities in 37 states. Since many of its members receive far less than the amounts their state departments of welfare have determined are necessary for minimal subsistence, often as the result of the imposition of grant

maximums, the organization has devoted much of its energies and resources to the abolition of arbitrary restrictions on grant amounts.

Associated Catholic Charities, Incorporated is a private charitable organization that provides counseling and other services, as well as limited material aid, to many of the poor people in the City of Baltimore who lack the basic necessities of life. Catholic Charities has insufficient funds, however, to meet the dire needs of all those individuals and families who seek its assistance. It is particularly concerned about that group of the poorest of the poor families, large families with little or no income. It thus has a vital interest in apprising this Court of the manifest injustices resulting from the State of Maryland's imposition of a maximum AFDC grant applying regardless of family size.

The legal services offices that appear as *amici curiae* have represented plaintiffs in the actions other than this case in which grant maximums have been declared unconstitutional by various three-judge district courts, or are representing plaintiffs in actions currently pending in three-judge district courts in which the validity of grant maximums are being challenged, as follows: Pine Tree Legal Assistance, Inc. (Portland, Maine)—*Westberry* v. *Fisher,* 297 F. Supp. 1109 (D. Me., S.D. 1969); Legal Aid Society of the Pima County Bar Association (Tucson, Arizona)—*Dews* v. *Henry,* 297 F. Supp. 587 (D. Ariz. 1969); Seattle Legal Services Center (Seattle, Washington)—*Lindsey* v. *Smith,* —— F. Supp. —— (Civ. No. 7636, W.D. Wash., opinion filed Aug. 20, 1969); Neighborhood Legal Assistance Foundation (San Francisco, California) —*Kaiser* v. *Montgomery,* —— F. Supp. —— (Civ. No.

49613, N.D. Cal., opinion filed Aug. 28, 1969); Legal Aid Society of Charleston (Charleston, West Virginia)—*Powers* v. *Vincent,* Civ. No. 68-170, S.D. W.Va.; Legal Aid Society of Albuquerque (Albuquerque, New Mexico)—*Salazar* v. *Goodwin,* Civ. No. 8027, D. N.Mex.; Atlanta Legal Aid Society, together with Michael A. Doyle, Esq. (Atlanta, Georgia)—*Thomas* v. *Burson,* Civ. No. 2381, M.D. Ga. These offices are directly and vitally concerned with the decision of this Court, which will determine the right of their clients and the class they represent to receive an amount of public assistance not limited by the application of an arbitrary grant maximum.

## Statement of the Case

Every state in the union provides financial assistance to needy dependent children under the Aid to Families with Dependent Children (AFDC) program.[1] Through this program, states distribute funds, the major portion of which is obtained from federal grants-in-aid, pursuant to the Social Security Act of 1935 for the purpose of:

1. "encouraging the care of dependent children in their own homes . . . to help maintain and strengthen family life," and
2. "furnish[ing] financial assistance . . . to needy dependent children and the parents or relatives with whom they are living." (The Social Security Act of 1935, §401, 42 U.S.C. §601.)

To receive aid, a child must satisfy three basic federal requirements. The child must be: (1) needy, (2) "deprived of

[1] See *King* v. *Smith,* 392 U.S. 309, 311 (1968).

parental support or care by reason of the death, continued absence from the home, or physical or mental incapacity of a parent" and (3) living with a parent or other statutorily specified relative. 42 U.S.C. §606. In addition, the child must satisfy any state-imposed eligibility condition consistent with the Social Security Act and the United States Constitution.

The state determines the amount of assistance payable to a child by first determining need, that is, the type and quantity of goods and services minimally necessary for subsistence and the amounts of money required to purchase such goods and services.[2] (For example, appellants determined need for Mrs. Williams and her eight children as being $296.15 per month and that for Mr. and Mrs. Gary and their eight children as being $331.50.) From need, the state subtracts available resources, such as earned income, savings, and Social Security benefits, to determine the recipient's "budgetary deficit." (Neither appellee family possessed such resources.) To supply a child or family with the basic wherewithal necessary for subsistence, a state would have to grant an amount equal to this budgetary deficit. However, many states do not meet the full budgetary deficit, leaving families with less than the state's conservative, often penurious, estimate of the minimum amount needed for subsistence. Twenty-three states currently impose various types of maximums limiting public assistance to some fraction of the state-determined budgetary deficit.[3] There are two principal types of such maximums: individual maximums and family maximums. States imposing

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[2] *Id.*, at 318-19, n. 14.

[3] See Appendix A for details of the maximum grant schedules of all states imposing them.

individual maximums simply limit the assistance available to any person or class of persons to a fixed amount. This amount may be the same for all public assistance recipients or it may vary with some characteristic of the individual, as for example the number of children in his family. The maximum may be expressed as a flat dollar amount (individual maximum) or a percentage of the family's budgetary deficit (percentage reduction) or in both such ways.[4] Thus, the state of Mississippi limits the amount of AFDC assistance payable to $30 per month for the first child in any family, $18 for the second, and $12 for the third, while simultaneously limiting assistance to no more than 30 per cent of a child's budgetary deficit and paying the lesser of the amounts indicated by these two limitations. Listed in Table 1 below are the fixed-dollar individual maximums imposed by the various states as of varying recent dates.[5]

TABLE 1—INDIVIDUAL MAXIMUMS

| State | First Child | Second Child | Fifth Child | Tenth Child |
|---|---|---|---|---|
| Arkansas | $ 60 | $ 10 | $ 10 | $ 0 |
| Delaware | 75 | 12 | 10 | 0 |
| Tennessee | 48 | 16 | 16 | 0 |

[4] The percentage reduction device is in no way at issue in this case. For details as to those states that impose both grant maximums and a percentage reduction, see National Center for Social Statistics, Social and Rehabilitation Service, U.S. Dept. of Health, Education, and Welfare, Report D-3 (Oct. 1968), Tables 2 and 3.

[5] See Appendix A, Tables 2 and 3 for further details and effective dates. Ten of the 17 states listed combine individual maximums with family maximums, see Table 2 *infra*, the effect of which is to cut off payments before the tenth child is reached.

| State | First Child | Second Child | Fifth Child | Tenth Child |
|---|---|---|---|---|
| Mississippi | 30 | 18 | 12 | 0 |
| California | 148[5a] | 24 | 37 | 6 |
| Nevada | 25[5b] | 25[5b] | 25[5b] | 25[5b] |
| Indiana | 50 | 25 | 25 | 25 |
| Missouri | 46 | 26 | 26 | 26 |
| Arizona | 80 | 27 | 27 | 0 |
| Maine | 40 | 30 | 27 | 0 |
| Nebraska | 110[5a] | 30 | 30 | 0 |
| Alabama | 50 | 30 | 30 | 0 |
| Georgia | 40 | 31 | 31 | 0 |
| Oklahoma | 46 | 39 | 31 | 0 |
| Alaska | 50 | 40 | 40 | 40 |
| Utah | 90 | 48 | 20 | 14 |
| Wyoming | 100 | 70 | 15 | 0 |

Individual maximums may or may not be imposed as to all classes of public assistance recipients. Typically, they are imposed with particular ferocity upon AFDC children. Thus, the state of Mississippi pays 100 per cent of need (subject to certain fixed-dollar maximums) to recipients in the "adult categories" of public assistance, the aged (OAA), the blind (AB) and the disabled (APTD), while

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[5a] Amount represents payment for first child and one adult; no allocation given between adult and child.

[5b] Plus 20 per cent of unmet need.

paying 30 per cent of need to children. Similarly, the fixed-dollar maximum applicable to the Mississippi adult categories is more than four times the fixed-dollar maximum applicable to third and subsequent children.

The second principal type of maximum is the family maximum challenged in this case, whereby a state limits the amount of assistance available to a family to some fixed-dollar figure, irrespective of the children's or family's state-determined need or budgetary deficit. Because of the Maryland family maximum, appellees Gary and Williams, residents of Baltimore, received family grants of only $250 per month despite the fact that the state determined their budgetary deficits to be $296.15 and $331.50 respectively.[6] As is indicated in Table 2 below, family maximums are in force in 16 states, 10 of which also impose individual maximums.[7]

TABLE 2—FAMILY MAXIMUMS

| State | Family Maximum |
|---|---|
| Mississippi | $108 |
| Arkansas | 120 |
| Delaware | 150 |
| Tennessee | 150 |
| Georgia | 164 |
| West Virginia | 165 |

[6] For families residing in Maryland outside the city of Baltimore, the family maximum is $240 per month.

[7] See Appendix A, Tables 1 and 2 for further details and effective dates.

| State | Family Maximum |
|---|---|
| Alabama | 170 |
| New Mexico | 190 |
| Arizona | 220 |
| Wyoming | 230 |
| Virginia | 245 |
| Maine | 250 |
| Maryland | 250 |
| Kentucky | 320 |
| Washington | 325 |
| Oklahoma | 353 |

States differ in the methods by which they relate family maximums to available resources.[8] Maryland subtracts available resources[9] from need, so that a family having a state-determined need of $350 per month and outside income of $100 per month would have its need fully met through a combination of the $250 family-maximum grant and $100 of earnings. Under the Arizona maximum litigated in *Dews* v. *Henry*, 297 F. Supp. 587 (D. Ariz. 1969), on the other hand, available resources were subtracted from the $220 family maximum, not from need. 297 F. Supp. at 590.

[8] 42 U.S.C. §602(a)(7) provides that in determining need the state shall take other income and resources of the child or caretaker fully into consideration. That provision does not, however, reach the issue of how other income and resources are to be treated vis-à-vis a maximum grant unrelated to need.

[9] In defining available resources, all states must disregard a portion of all income under the federal work incentive program. 42 U.S.C. §§602(a)(8), 602(a)(19), and 634.

Thus the family in the example given above would receive only $220 as a combination of the AFDC grant ($120) plus income ($100) and would face an unmet need of $130 monthly.[10]

Despite these variations in state maximum-grant provisions, they have in common one basic distinction. Two classes of AFDC recipients are created: those whose state-determined needs are less than the relevant maximum and those whose needs exceed that figure. Those recipients whose needs do not exceed the maximum receive AFDC assistance commensurate with their needs in conformity with the central purpose of the AFDC program; those recipients whose needs exceed the maximum receive a grant the amount of which is fixed by the maximum and which consequently fails to meet their need.[11]

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[10] A variation of this latter method is found in *Westberry* v. *Fisher*, 297 F.Supp. 1109 (D. Me., S.D. 1969), in which the Maine maximum grant of $250 was combined with a so-called maximum budgeted need of $300. 297 F.Supp. at 1111-13. Income and resources were subtracted from need unless need exceeded $300, in which case they were subtracted from $300, payments in any case not exceeding the maximum of $250. Thus in the example given, subtracting income of $100 from the maximum budgeted need of $300 would result in a grant of $200, leaving the family with $50 of unmet monthly need.

[11] In general, the difference between the two classes of families is one of size, although special needs such as medically mandated diet requirements and school supplies play some part in increasing a family's level of need. Maryland bases its need determination on a single standard for subsistence (food, clothing, household maintenance, and household replacements) that varies by family size; a shelter requirement based on rent actually paid within a schedule of maximums differing by family size and geographical location; separate requirement standards for children cared for by a relative other than a parent; and special requirement standards, when appropriate, covering special diet requirements, school supplies for children attending school, laundry costs, and life insurance premiums to provide for burial. State of Maryland, Manual of the Department of Social Service, Rule 200-V.

Family maximums, in addition, impose another and more egregiously unlawful distinction, namely, that between children (and parents) in large families and those in smaller families. In Maryland, a child born into a penurious single-parent family will have his state-determined needs met in full if no more than four siblings preceded him. For the sixth and subsequent children in a single-parent family, nothing is paid. Such a child the state wholly deprives of benefits accorded children in smaller families. Of course it is anticipated that such a child will share in the meager amounts provided for his older brothers and sisters and his mother or other caretaker relative. The effect of his deprivation may thus be thought of as diffused among all members of his family, thus expanding the class of those disadvantaged by the state of Maryland's distinction to all members, child and adult, of the larger family. Taking this more expanded view of the disadvantaged class sharply narrows the difference between family maximums and individual maximums such as Mississippi's (under which the first child receives a maximum of $30 per month and the third and subsequent children receive $12), at least where the difference bears no relation to the economies of larger families.[12]

Subclasses are even formed within the class of children in those families subject to the maximum grant. Such children receive per-capita grants the amount of which is based solely on the number in the family. Thus a child in a family of eight receives 50 per cent more than a child

[12] Indeed, in *Ward* v. *Winstead*, now pending in the Northern District of Mississippi (Civ. No. GC 6829-K), the state has asked the court to delay adjudication because the Court's decision in this case will be dispositive.

in a family of 12, and in neither case is the size of the grant based on need.[12a]

The balance of this brief is devoted to an analysis of the discriminatory deprivation worked by this distinction between recipients in large families and recipients in smaller families and to an ultimately futile search for some justification for this apparently discriminatory distinction. In the end, it is devoted to an explanation of why family maximums have been declared unconstitutional by every court, state and federal, that has considered the question. See *Williams* v. *Dandridge*, 297 F. Supp. 450 (D. Md. 1968, 1969); *Dews* v. *Henry*, 297 F. Supp. 587 (D. Ariz. 1969); *Westberry* v. *Fisher*, 297 F. Supp. 1109 (D. Me. 1969); *Lindsey* v. *Smith*, —— F. Supp. —— (Civ. No. 7636, W.D. Wash. 1969); *Collins* v. *Board of Social Welfare*, 248 Iowa 369, 81 N.W.2d 4 (1957). See also *Kaiser* v. *Montgomery*, —— F. Supp. —— (Civ. No. 49613, N.D. Cal. 1969), enjoining application of California's individual maximums.

## Summary of Argument

The Maryland regulation establishing a ceiling on the size of the grant any family may receive under the federally funded Aid to Families with Dependent Children (AFDC) program creates two classes of recipient families: Those families whose state-determined needs do not exceed

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[12a] Parents with a sufficient number of children to be affected by the grant maximum receive aid the amount of which is based solely on the number of their children, decreasing in amount as children increase in number, rather than being based on need. This result infringes not only on their right to the equal protection of the laws, but also on their exercise of constitutionally protected activity, see p. 48, *infra*.

the maximum receive a grant commensurate with their needs, while those families whose needs exceed the maximum receive a grant the amount of which is below, and bears no relation to, their needs. The difference between the two classes of families is in general one of size, with larger families comprising the disadvantaged class.

The classification thus created denies the equal protection of the laws to members of the disadvantaged class in that the classification bears no relation to, but is subversive of, the dual purposes of Title IV of the Social Security Act: fulfilling the financial needs of needy dependent children and their caretakers and promoting the care of such children in the family home. As to the former, the grant maximum ignores a significant portion of the needs of those families affected by it; as to the latter, the grant maximum encourages the placement of children outside the family home and in the custody of a relative eligible to receive benefits on their behalf unaffected by the maximum.

The grant maximum and the classification it creates warrants the strict scrutiny of this Court for a number of reasons: the classification affects appellees' ability to obtain the fundamental necessities of existence; it reaches a class characterized by political powerlessness; it undermines the integrity of the basic family unit; and it creates a class of children based on a status over which they have no control.

The various state interests proffered as justifying the imposition of a grant maximum fail to save the challenged classification from invalidity under the Equal Protection Clause. They are but tenuously related to the composition of the disadvantaged class; they ignore and subvert the intent of Congress as to how these interests are to be attained; they are constitutionally impermissible.

Finally, the imposition of a grant maximum violates the congressional mandate that aid be furnished to all individuals eligible under the Social Security Act. The maximum can be seen as denying aid outright to certain members of eligible families or as conditioning the scope of eligibility on the size of the recipient family, in either case in violation of the Social Security Act.

## I.

## Imposition of the family maximum denies appellees the equal protection to which they are entitled under the Fourteenth Amendment.

### A. *The family maximum divides public assistance recipients into two classes and imposes deprivations on those children in larger families.*

Appellees' basic contention, accepted by each of the five lower courts that have passed on the question, is that the family maximum violates the Equal Protection Clause of the Fourteenth Amendment because that maximum divides AFDC recipients into two classes and imposes deprivations on one of those two classes that lack rational relation to, and indeed frustrate attainment of, the central purposes of the Social Security Act, namely, the assistance of needy children and the preservation of the family unit.

In Maryland, any child born into a wholly penurious single-parent family already having five or more children will be denied assistance altogether. If one takes account of the fact that the $250 paid to such a family will be shared among its members, all members of such a family are denied assistance commensurate with their needs. Such deprivation is visited upon recipients falling within this

class, while assistance commensurate with state-determined needs is afforded others, because of the fact that the disfavored recipients live in larger families.[14] It is this distinction that appellees argue is without rational foundation.

### B. *The Equal Protection Clause requires a rational justification for the deprivation imposed by the family maximum.*

To fulfill the constitutional command that "no State . . . shall deny to any person within its jurisdiction the equal protection of the laws," a state-imposed classification must "rest upon some difference which bears a reasonable and just relation to the act in respect to which the classification is proposed." *Gulf, Colorado & Santa Fe Ry.* v. *Ellis,* 165 U.S. 150, 155 (1896). It "must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike." *F. S. Royster Guano Co.* v. *Virginia,* 253 U.S. 412, 415 (1920).

This assurance of even-handed treatment reaches all governmental action, whether it be to impose limitations on individual conduct or to distribute public benefits. The notion that public benefits are "absolutely discretionary" and that therefore there "is no judicial review of the manner in which that discretion is exercised" (*Smith* v. *Board of Commissioners of the District of Columbia,* 259 F. Supp. 423, 424 (D.D.C. 1966)) has been thoroughly and finally repudiated. The protections of the Equal Protection Clause have been applied to shield public assistance recipients against the

[14] Or possibly because their needs are extraordinary, see note 11, *supra.*

imposition of: (1) durational residence restrictions, *Shapiro* v. *Thompson*, 394 U.S. 618 (1969); (2) the substitute-father rule, which deprived children of benefits because of their mothers' relationships, *Smith* v. *King*, 277 F. Supp. 31 (D. Ala. 1967), aff'd on other grounds, 392 U.S. 309 (1968); (3) denial to working mothers of benefits allowed to mothers with like unearned income, *Anderson* v. *Burson*, 300 F. Supp. 401 (N.D. Ga. 1968); (4) arbitrary variations in benefit levels between different areas within a state, *Rothstein* v. *Wyman*, 303 F. Supp. 339 (S.D.N.Y. 1969); and (5) the family maximum involved in this case and the related individual maximums involved in *Kaiser* v. *Montgomery, supra.*

***C. A searching appraisal of the family maximum is required because of the fundamental importance of public assistance, the powerlessness of AFDC children, the effect of the maximum on the maintenance of an intact family unit and the classification of children based on parental conduct over which they have no control.***

**1. The challenged classification affects the availability of the fundamental rudiments of human existence.**

Not only is it clear that the benefits of the Equal Protection Clause are applicable to the receipt of public assistance benefits; in recent months it has become clear that governmental decisions affecting public assistance benefits fall in that class of cases calling for the most searching judicial appraisal. It has long been recognized that standards of judicial review vary depending on the situation involved and the interests, public and private, implied. See *Developments in the Law—Equal Protection*, 82 Harv. L. Rev. 1065 (1969); *Baxtrom* v. *Herald*, 383 U.S. 107 (1966) (jury trial); *Cox* v. *Louisiana*, 379 U.S. 536

(1965) (speech and assembly); *Carrington* v. *Rash*, 380 U.S. 89 (1965), and *Harper* v. *Virginia Bd. of Elections*, 383 U.S. 663 (1966) (voting); and *Shapiro* v. *Thompson*, *supra* (interstate travel). It could scarcely be otherwise. The judiciary cannot discharge the responsibilities assigned to it by the Constitution by treating alike the allocation of subsistence rations and the licensing of pleasure boats. Recognizing the judiciary's peculiar responsibilities in dealing with decisions affecting an individual's basic livelihood, a three-judge district court in the Southern District of New York has stated:

> "It can hardly be doubted that the subsistence level of our indigent and unemployable aged, blind and disabled involves a more crucial aspect of life and liberty than the right to operate a business on Sunday or to extract gas from subsoil. We believe that with the stakes so high in terms of human misery the equal protection standard to be applied should be stricter than that used upon review of commercial legislation and more nearly approximate that applied to laws affecting fundamental constitutional rights. Poverty is a bitter enough brew. It should not be made even less palatable by the addition of unjustifiable inequalities or discriminations. It must not be forgotten that in most cases public assistance represents the last resource of those bereft of any alternative." *Rothstein* v. *Wyman*, 303 F. Supp. 339, 347 (S.D.N.Y. 1969).

To similar effect is the court's analysis in *Kelly* v. *Wyman*, 294 F. Supp. 893 (S.D.N.Y. 1968), prob. juris. noted *sub nom. Goldberg* v. *Kelly*, 394 U.S. 970 (1969):

"Suffice it to say that to cut off a welfare recipient in the face of this kind of 'brutal need' without a prior hearing of some sort is unconscionable, unless overwhelming considerations justify it." *Id.* at 900 (footnote omitted).

Appellees' right to the most searching judicial protection of their entitlement to even-handed allocation of public assistance benefits is based quite simply on the elemental importance of these benefits to them and of their consequent status as fundamental human rights. This Court has recognized the right to procreate as "one of the basic civil rights of man" for the obvious reason that "[m]arriage and procreation are fundamental to the very existence and survival of the race." *Skinner* v. *Oklahoma,* 316 U.S. 535, 541 (1942). Consequently, "strict scrutiny of the classification which a State makes in a sterilization law is essential." *Id.* Similarly, this Court has dealt with "rights [that] involve the intimate, familial relationship between a child and his own mother" by noting that "we have been extremely sensitive when it comes to basic civil rights . . . and have not hesitated to strike down an invidious classification even though it had history and tradition on its side." *Levy* v. *Louisiana,* 391 U.S. 68, 71 (1968).

More even than marriage and procreation, the ability to obtain food, clothing, and shelter is "fundamental to the very existence and survival of the race," *Skinner, supra.* It is clear beyond peradventure that the interests at stake in this action and the decision of this Court involve the basic rudiments of human existence. The maximum grant provides families with less than the amount necessary to purchase minimally adequate food, clothing, shelter, and utilities.

The Social Security Administration poverty index, considered by all experts to be the very lowest amount with which a family can provide for itself,[14] sets forth $5,090 as the income level for a nonfarm family of seven below which such a family is considered poor. Orshansky, *Counting the Poor: Another Look at the Poverty Profile,* in Poverty in America 67, 75 (Ferman, Kornbluh, and Haber, eds. 1968). (This is the familiar index setting forth a poverty line of $3,130 for a nonfarm family of four.) That income level is based on food prices as of January 1964; if appropriate adjustment is made for the increase in the consumer price index for food between January 1964 and September 1969, Economic Indicators, September 1969 at 26, the poverty level for a family of seven becomes $6,159. In contrast, the annual AFDC payments to families of seven (one parent and six children) under grant maximums in effect in the following States are: Maryland —$3,000; Alabama—$2,040; Utah—$2,952; Mississippi—$1,296; Arizona—$2,640; Georgia—$1,968; Wyoming—$2,680.

That the Court here deals with fundamental human rights emerges even more clearly if the abstraction of the family maximum is translated into the realities of appellee Williams' life:

"After payment of her monthly rent, and the cost for heating her home with coal, she has less than $175 per

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[14] For criticism of the index see Speth, Cotton, Bell, Mindus, *A Model Negative Income Tax Statute,* 78 Yale L.J. 269, 298 (1968); Friedman, *The Official Estimates Are Wrong,* in Poverty American Style 106, 109 (Miller, ed. 1966); Bureau of Social Science Research, Inc., Living Costs and Welfare Payments 34-36 (1969); The President's Commission on Income Maintenance Programs, Poverty Amid Plenty: The American Paradox 29-33 (mimeo Nov. 12, 1969).

> month to feed and clothe her family [of eight children], and to provide them with the other necessities of life. She is constantly forced to buy clothes and shoes for her children on credit, and she is already in serious debt. Most of her children need shoes right now, and they sometimes stay home from school, especially in the wintertime, because they do not have the necessary clothes to wear." Stipulation of Facts, Appendix at 72.

As to appellees Junius and Jeanette Gary and their eight children:

> "After paying the monthly rent of $75 and the gas and electricity bill, Mr. Gary has less than $150 to feed and clothe his family and to provide them with all the other necessities for the month. All of his children are in school and are constantly in need of clothes and shoes and money for other kinds of supplies. His gas and electricity is sometimes shut off, because he is unable to pay the bill. He is forced to buy clothing and shoes for his children on credit and he is constantly in debt as a result. Most of his children need shoes and clothing now and sometimes they have to stay home from school." Stipulation of Facts, Appendix at 74.

A Secretary of Health, Education, and Welfare testified earlier this year that:

> "I would make a categorical statement, although I have not counted them, that the overwhelming proportion of those 8 million people who are on welfare are malnourished. I can't come to any other conclusion after looking at how much money they get every month.

I don't see how those mothers can buy adequate milk and food for those children even if they had the knowledge for it." Testimony of Secretary Wilbur J. Cohen, *Hearings before the Senate Select Comm. on Nutrition and Human Needs,* 90th Cong., 2d Sess., part 2, at 356 (1969).[14a]

**2. Those subject to the deprivation created by the family maximum comprise a politically impotent class requiring this Court's special protection.**

Not only are appellees entitled to the Court's most exacting protection because of the character of the interest affected; such protection is also called forth "by the defenseless and disadvantaged state of the class of citizens [involved], who are usually less able than others to enforce their rights." *Rothstein* v. *Wyman,* 303 F. Supp. at 347. As this Court has recognized,

"prejudice against discrete and insular minorities may be a special condition, which tends seriously to curtail the operation of those political processes ordinarily to be relied upon to protect minorities, and which may call for a correspondingly more searching judicial scrutiny." *United States* v. *Carolene Products,* 304 U.S. 144, 153, n. 4 (1938).

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[14a] The Maryland State Department of Social Services has itself reported the conclusion "that Baltimore has the unenviable distinction of being among the leading locales in the country in malnutrition (of children)." Maryland State Department of Social Service, Profile of Caseloads, Research Report No. 5 at 8 (1969). For more general information on malnutrition among welfare recipients, see *Hearings, supra,* at 614-15; Citizens' Board of Inquiry into Hunger and Malnutrition in the United States, Hunger, U.S.A. 28, 72 (1968); LeBeaux, *Life on A.D.C.: Budgets of Despair,* in Poverty in America 519, 523-26 (Ferman, Kornbluh, and Haber, eds. 1968).

A class comprising the poorest of the poor, consisting primarily of children, frequently stigmatized by race and illegitimacy in addition to their poverty, clearly qualifies as such a discrete and insular minority:

> "More than any other segment of society, the very lowest economic stratum is socially isolated. The poor man not only fails to comprehend society or his community, he is out of touch with it. He reads fewer newspapers, hears fewer news programs, joins fewer organizations, and knows less of the current life of either the community or the larger world than more prosperous, better educated people do." U.S. Dept. of Health, Education and Welfare, Welfare Administration, Division of Research, *Low-Income Life Styles* 4-5 (1968).

As Michael Harrington concluded in his classic study, "the poor are politically invisible." Harrington, *The Other America* 13 (1962).[18]

The welfare poor are if anything even more isolated from the social and political life of the large community than are the poor as a whole:

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[18] "[T]he poor and racial minorities . . . are not always assured a full and fair hearing through the ordinary political processes, not so much because of the chance of outright bias, but because of the abiding danger that the power structure may incline to pay little heed to even the deserving interests of a politically voiceless and invisible minority. These considerations impel a closer judicial surveillance and review of administrative judgments adversely affecting racial minorities, and the poor, than would otherwise be necessary." *Hobson* v. *Hansen*, 269 F. Supp. 401, 507-08 (D.D.C. 1967), aff'd *sub nom. Smuck* v. *Hobson*, 408 F.2d 175 (D.C. Cir. 1969).

"[T]here are important differences between the very poor who manage to maintain themselves without public assistance and those who do not have the resources to achieve even a minimum level of economic independence. For example, negative public attitudes towards mothers who are dependent on AFDC tend to transfer to the mothers and their children, with an associated sense of failure, strong self-disparagement and hopelessness." U.S. Dept. of Health, Education and Welfare, Welfare Administration, Division of Research, *Growing Up Poor* 7 (1966).

And the most powerless of the poor, lacking even theoretical access to the political process through the franchise, are the children whose livelihood is here at issue:

"[O]f all groups among the poor it is children who have been most neglected and most shabbily treated by current social policies, despite the fact that of all population groups they are the most vulnerable." Burns, *Childhood Poverty and the Children's Allowance,* in Children's Allowances and the Economic Welfare of Children 3 (Burns, ed. 1968).

**3. The challenged classification interferes with the maintenance of an intact family unit.**

By refusing to recognize the needs of families with large numbers of children unless some of the children are removed from the parental home, the Maryland grant maximum and its counterparts in other states undermine the fundamental right of certain relatively intact families to remain intact. "In effect, Maryland impermissibly conditions . . . eligibility for benefits upon the relinquishment

of the parent-child relationship." *Williams* v. *Dandridge*, 297 F.Supp. at 459.[16] Such a result furnishes an additional reason for this Court to subject the classifications created by the challenged regulation to the closest possible judicial scrutiny.

This Court has long recognized the fundamental right of a parent to bring up his children: *Meyer* v. *Nebraska*, 262 U.S. 390, 399 (1923) ("liberty" in the Fourteenth Amendment's Due Process Clause "denotes not merely freedom from bodily restraint but also the right of the individual to contract, to acquire useful knowledge, to marry, establish a home, and bring up children . . . "); *Pierce* v. *Society of Sisters*, 268 U.S. 510 (1925); *Prince* v. *Massachusetts*, 321 U.S. 158, 166 (1944) ("It is cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparations for obligations the state can neither supply nor hinder."); *Poe* v. *Ullman*, 367 U.S. 497, 543, 551-52 (1961) (Harlan, J., dissent) (the home is "the seat of family life. And the integrity of that life is something so fundamental that it has been found to draw to its protection the principles of more than one explicitly granted Constitutional right." The integrity of the family unit is one of those interests that "require particularly careful scrutiny of the state needs asserted to justify their abridgment."); *Griswold* v. *Connecticut*, 381 U.S. 479, 482-84 (1965); and *Ginsberg* v. *New York*, 390 U.S. 629, 639 (1968), reh. den. 391 U.S. 971.

Family integrity has been protected not only against gross forms of state intervention, but also against state

[16] See also *Dews* v. *Henry*, 297 F. Supp. at 592.

action that erodes this "basic civil right" of the "intimate family relationship," through the denial of benefits or opportunities on a discriminatory basis. In *Levy* v. *Louisiana, supra,* this Court invalidated a state statute that had been construed to deny wrongful death benefits to illegitimate children; in *Loving* v. *Virginia,* 388 U.S. 1, 12 (1967), this Court struck down a racial barrier to marriage, "one of the basic civil rights of man." Since Maryland and 22 other states in constructing their AFDC grant levels have sought to induce family separation and penalize maintenance of the integrity of the family unit, the justifications for such actions must undergo the most rigorous scrutiny.

**4. The family maximum creates classifications of children based on conduct of their parents over which they have no control.**

The effect of an AFDC grant maximum is to penalize certain needy dependent children not because of any conduct of their own, but because of their status as members of a large family. Classifications embodying discriminations based on personal characteristics over which an individual has no control—such as race,[17] alienage,[18] indigence,[19] and, most recently, illegitimacy[20]—have been regarded by this Court as inherently suspect and as calling forth "the most rigid scrutiny." *Korematsu* v. *United States,* 323 U.S. 214, 216 (1944).

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[17] *E.g., Monroe* v. *Bd. of Commissioners,* 391 U.S. 450 (1968); *McLaughlin* v. *Florida,* 379 U.S. 184 (1964); *Brown* v. *Bd. of Education,* 347 U.S. 483 (1954).

[18] *E.g., Oyama* v. *California,* 332 U.S. 633 (1948).

[19] *E.g., Harper* v. *Virginia Bd. of Elections, supra; Douglas* v. *California,* 372 U.S. 353 (1963); *Griffin* v. *Illinois,* 351 U.S. 12 (1956).

[20] *Levy* v. *Louisiana, supra.*

In the context of the statutory right to recover for the wrongful death of a parent, this Court has concluded that "it is invidious to discriminate against [illegitimate children] when no action, conduct or demeanor of theirs is possibly relevant to the harm that was done the mother." *Levy* v. *Louisiana*, 391 U.S. at 72 (footnotes omitted). The same rationale must apply to the statutory right to receive AFDC assistance: It is invidious to discriminate against certain innocent children "when no action, conduct or demeanor of theirs is possibly relevant" to their need. It is particularly invidious in light of the fact that "protection of such [dependent] children is the paramount goal of AFDC." *King* v. *Smith*, 392 U.S. at 325.[21]

Because this Court is here concerned with "the last resource of those bereft of any alternative," *Rothstein* v. *Wyman*, 303 F. Supp. at 347, because those who receive that resource are among the most politically impotent members of our society, because the right to maintain an intact family is being threatened or penalized, and because children are being burdened for reasons over which they have no control, the "cruelties and anomalies" that appellants admit result from imposition of a maximum grant (Brief for Appellants at 37) must be subjected to the most searching possible judicial examination. Such an inquiry, even considering the proffered justifications for the challenged classification, must inevitably lead to the conclusion that appellees and the class they represent are being denied the equal protection of the laws.

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[21] "The present scheme penalizes some recipients but not others on the basis of circumstances which are beyond the control of the recipients and have no rational relationship to the purpose of the AFDC program." *Kaiser* v. *Montgomery*, unreported opinion at 7.

**D. *Limiting public assistance by imposition of the family maximum denies appellees equal protection.***

Whether tested by the criteria generally applicable under the Equal Protection Clause or the more stringent criteria that *amici* urge are appropriate, the imposition of family maximums denies those disadvantaged by it the equal protection of the laws guaranteed them by the Fourteenth Amendment.

The dual purposes of Title IV of the Social Security Act of 1935, as amended, 42 U.S.C. §§601-644 (1968)[22] and of the various state implementing statutes,[23] are distinct but complementary: assuring the basic necessities of life to needy dependent children and their caretakers and

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[22] "For the purpose of encouraging the care of dependent children in their own homes or in the homes of relatives by enabling each State to furnish financial assistance and rehabilitation and other services, as far as practicable under the conditions in such State, to needy dependent children and the parents or relatives with whom they are living to help maintain and strengthen family life and to help such parents or relatives to attain or retain capability for the maximum self-support and personal independence consistent with the maintenance of continuing parental care and protection ..." Social Security Act §401, 42 U.S.C. §601.

[23] The Maryland statute, closely paralleling the federal Act, sets forth the purpose of AFDC as being

> "the strengthening of family life through services and financial aid, whereby families may be assisted to maximum self-support in homes meeting the requirements for child care established by law in this State." Ann. Code of Md., Art. 88A, §44A.

The statute goes on to provide that

> "The amount of assistance which shall be granted for any dependent child . . . shall be sufficient, when added to all other income and support available to the child, to provide such child with a reasonable subsistence compatible with decency and health." Ann. Code of Md., Art. 88A, §49.

Other statutes are similar. See, *e.g.*, Maine R.S.A. §3741 (Supp. 1968-69); Cal. Welfare & Insts. Code §11205.

strengthening the family unit in which such children are being raised.

Elaborate argument is hardy required to establish that family maximums and the distinction they imply bear no rational relation to the purpose of providing basic financial protection to needy dependent children, which this Court has recognized as "the paramount goal of AFDC." *King* v. *Smith*, 392 U.S. at 325. Nothing could be more obvious than that a classification that results in fulfilling the needs of some children and families while ignoring to a greater or lesser extent the needs of other equally needy and equally dependent children and families bears no relation to the statutory purpose of aiding these children and their caretakers. Had one of the "excess" Williams or Gary children been born into a smaller family, he would have received assistance of $79 per month.[24] Instead, he receives no public assistance in his own right. Moreover, there is no suggestion that such denial reflects a state's determination that he receives nothing because he is not in need. The very function of the family maximum is to limit public assistance to an amount less than state-determined need. It would be absurd to suggest that the evil of need and dependency is "most felt"[25] in small, rather than large, families, and

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[24] If over 12 years of age; $65 per month if six through twelve years of age. *Williams* v. *Dandridge*, 297 F. Supp. at 453-54.

[25] In the field of economic regulation, this Court has often been tolerant of underinclusiveness in the coverage of regulatory statutes, in recognition of the legitimacy of a legislative decision to attach an evil "where experience shows it to be *most felt*," *Keokee Coke Co.* v. *Taylor*, 234 U.S. 224, 227 (1914) (emphasis supplied). See also, *e.g.*, *Williamson* v. *Lee Optical Co.*, 348 U.S. 483, 489 (1955); *West Coast Hotel* v. *Parrish*, 300 U.S. 379, 400 (1937); *Mutual Loan Co.* v. *Martel*, 222 U.S. 225, 235-36 (1911). Such cases are wholly inapposite when the state has assumed the obligation of fulfilling

is increasingly less severe as family size increases; yet small families have their needs met while large families receive amounts that are arbitrarily lower than their need and that fall progressively further below such need as the size of the family increases. The benefited class is thus "underinclusive" by virtue of its failure to include all those similarly situated with respect to the statutory purpose of aiding needy dependent children,[20] a defect that establishes "a *prima facie* violation of the equal protection requirement of reasonable classification," Tussman & tenBroek, *The Equal Protection of the Laws*, 37 Calif. L. Rev. 341, 348 (1949).

The Georgia welfare regulation that denied aid to a person employed full time regardless of his income but provided assistance to needy persons employed part time was found void for underinclusion by reasoning directly applicable to the instant case:

> "[T]he . . . regulation . . . violates plaintiffs' constitutional rights established by the equal protection clause of the Fourteenth Amendment to the Constitution in that, although plaintiffs are as needy as other recipients of assistance . . . , the regulation operates to the finan-

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the subsistence needs of the entire class of needy dependent children, and, indeed, is required by federal law to extend assistance to all who meet the eligibility requirements of need and dependency. 42 U.S.C. §602(a)(10) requires that "aid to families with dependent children shall be furnished with reasonable promptness to all eligible individuals." See *King* v. *Smith*, 392 U.S. at 317, 333, in which the provision is referred to as 42 U.S.C. §602(a)(9).

[20] Underinclusion has been defined as occurring "when a state benefits or burdens persons in a manner that furthers a legitimate public purpose but does not confer this same benefit or place this same burden on others who are similarly situated." *Developments in the Law, supra*, 82 Harv. L. Rev. at 1084.

cial disadvantage of plaintiffs on . . . a basis which bears no reasonable relationship to plaintiffs' financial needs and therefore to the purposes of the Social Security Act." *Anderson* v. *Burson*, 300 F. Supp. at 404.

In short, the family maximum creates a distinction between needy dependent children in small families and equally needy dependent children in large families and deprives children in the latter. It thereby creates a discrimination bearing no rational relation to the primary purpose of the AFDC program: the relief of need among all dependent children.

The maximum grant is equally subversive of the AFDC program's other principal goal: "to help maintain and strengthen family life," 42 U.S.C. §601. The rationale of this statutory purpose has been expressed by the Department of Heath, Education, and Welfare as follows:

> "To live in the family to which he belongs is the foundation of a child's security. The public has an interest and an obligation in sustaining the contribution which parents and immediate family make to the development of a child. Financial inability to meet a child's needs, therefore, should not be allowed to force a parent to surrender responsibility for bringing up the child.
>
> "The assumption underlying the aid to dependent children program is that when a family circle is broken or incomplete, or parents are handicapped by physical or mental disability, the measure most conducive to the child's welfare is the strengthening of the home against the financial impact of these lacks or losses and to give

his parent, or other relative, a chance to gain or re-establish control over his affairs." *Handbook of Public Assistance Administration*, Part IV, §3401.[27]

Far from strengthening family life, the maximum encourages family dissolution. Because eligibility for AFDC is extended to a child living in the home of any one of a number of relatives other than his parents, 42 U.S.C. §606(a)(1), the effect of the maximum can be avoided and a grant based on need can be received if some of a family's children are removed from their original home and placed in the home of an eligible relative. As illustrated in the opinion of the court below:

> "If Mrs. Williams were to place two of her children of twelve years or over with relatives, each child so placed would be eligible for assistance in the amount of $79.00 per month, and she and her six remaining children would still be eligible to receive the maximum grant of $250.00. If Mr. and Mrs. Gary were to place two of their children between the ages of six and twelve with relatives, each child so placed would be eligible for assistance in the amount of $65.00 per month, and they and their six children would still be eligible to receive the maximum grant of $250.00." *Williams* v. *Dandridge*, 297 F. Supp. at 453-54.

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[27] The following excerpt from the legislative history of the Social Security Act bears out the Department's interpretation of statutory purpose:

> "[I]t has long been recognized in this country that the best provision that can be made for families of this description [without a potential breadwinner] is public aid with respect to dependent children in their own homes." H.R. Rep. No. 615, 74th Cong., 1st Sess., at 10 (1935).

The pressure thus so obviously exerted upon the integrity of the AFDC family trenches upon rights of constitutional as well as statutory origin. The value placed upon the maintenance and integrity of families by the Social Security Act is but one reflection of the central position of the family in our structure of values, a position protected by Constitution as well as statute. Marriage and the family are associations protected against governmental interference by the First and Fourteenth Amendments. See, *inter alia, Skinner* v. *Oklahoma, supra; Pierce* v. *Society of Sisters, supra; Griswold* v. *Connecticut, supra.* The right of man to marry and have children is among the "basic civil rights of man . . . fundamental to the very existence and survival of the race." *Skinner* v. *Oklahoma,* 316 U.S. at 541. The state may not unreasonably or arbitrarily interfere with the integrity of the family. Even more clearly, the state may not impose discriminatory regulations upon family associations, exerting disintegrating pressures upon those which the state, in its wisdom, deems too large. *Cf. Loving* v. *Virginia, supra; Sherbert* v. *Verner,* 374 U.S. 398 (1963).

In sum, the imposition of a family maximum constitutes a *prima facie* denial of equal protection because it deprives children living in larger families of subsistence afforded to similarly situated, equally needy children living in smaller families. This distinction, based on the size of the family unit, bears no rational relation to the principal purposes of the AFDC program: (1) the relief of childhood need and (2) the strengthening of the family. Indeed, the practice affirmatively frustrates the strengthening of the family by forcing a mother to choose between surrendering some of her children or depriving all of them.

This coercive pressure not only flaunts clearly enunciated federal statutory policy; it also trenches upon the constitutionally protected integrity of the family association by discriminatorily exerting disintegrating pressures on larger families.

### E. *The proffered state interests fail to justify the imposition of family maximums.*

*Amici* now turn to consideration of appellants' justifications for the family maximum, in the following order of increasing plausibility and decreasing acceptability: (1) the family maximum is a work incentive, (2) the family maximum discourages desertion, (3) the family maximum is a birth-control measure, (4) the family maximum saves funds, and (5) the family maximum is necessary to please Maryland's electorate. But first we pause for a few preliminary comments on the nature of the justification required when a practice is challenged under the Equal Protection Clause.

First, to justify a distinction, one must advert to legitimate governmental policy considerations that justify disparate treatment of the classes created by the distinction. To say that there is a reason, other than pure disdain for the disfavored class, for the disparate treatment is not to justify the distinction. There is a reason, other than simple group hatred, for most denials of equal protection. What is required is a justification for the distinction, that is, a difference between the classes that corresponds with, that justifies the disparate treatment. To do this, the classes distinguished must have different objective characteristics relevant to the policy being implemented. If the reason advanced to justify imposition of disadvantage on

a class also applies to the class being favored, no justification is afforded for the distinction. Similarly, if the reason advanced to justify the imposition of disadvantage is applicable to only a small fraction of the disadvantaged class, the line of demarcation between the favored and disfavored classes is not justified, but rather some other line of distinction between the small fraction of the disadvantaged class and whoever falls into the other class.

Second, the justification advanced must be the actual policy pursued by the legislature or administration rather than an afterthought displayed to mask an attempt at invidious discrimination. If a state in fact seeks to discriminate on a racial basis and disguises this attempt, a court would not hesitate to strike down legislation upon evidence of its true motivation. Particularly is this the case where the later-discovered purpose is not attributed to the legislature by direct evidence but only by inference from the statute, and where the fit between the proffered purpose and the actual effect of the statute is imperfect.

Third, the policy advanced must be legitimate. It must be a policy that the state can constitutionally pursue. Thus we cannot justify an apparently racially discriminatory policy by invoking justifications that betray an effort to suppress freedom of speech. In this case, one cannot advert to a state policy that is inconsistent with the purposes of the Social Security Act. In making funds available to the states for public assistance purposes, the federal government meant to attain certain purposes. In administering public assistance, states must observe these policies.

**1. Family maximums provide a work incentive.**

Appellants place principal reliance on their argument that the family maximum "provide[s] an incentive to employment not present in states not imposing maximums by allowing recipients to retain earnings in excess of the grant." Brief for Appellants at 32. Appellants apparently see a work incentive in the family maximum in that a family a member of which earns $200 a month and has state-determined needs of $350 a month in a state with a maximum grant of $250 a month will be entitled to keep $100 of the $200 earned, and thus the working member has an incentive to work. What seems to have escaped appellants is that the incentive to which they refer derives not from the imposition of the family maximum, but from the fact that the recipient is permitted to retain funds in excess of the maximum. Thus in *Dews* v. *Henry, supra,* the state of Arizona subtracts earnings from the family maximum, not from the level of need. More serious is the fact that the same incentive can be achieved without reference to the family maximum by permitting recipients to retain some portion of their earnings over and above their need-determined grant, which states must now do pursuant to the Social Security Act.[28] In short, the incentive to work that results from allowing a recipient to retain earnings has nothing to do with the family maximum and hence cannot serve as a justification for that practice.

***a. The work-incentive justification applies equally to persons not affected by the family maximum.***

The manner in which the family maximum does operate to provide an incentive is by limiting the amount of as-

[28] See subpart c., *infra.*

sistance payable to a family to some level below subsistence. Obviously if a person is confronted with the choice between employment and receiving less than subsistence, incentive to find employment will be greater than if his alternative is some form of subsistence provision. But this incentive effect cannot serve to justify the family maximum, for it does not explain why parents of large families should be subjected to such coercion while those of smaller families are exempt. Clearly the state has no grounds for pressuring into employment adult members of large families while not so pressuring persons in small families. As a justification for the family maximum, the reason assigned is underinclusive. It does not distinguish between the classes involved.

Nor can comparison between Maryland's family maximum and some imaginary paradigm situation involving the federal minimum level of wages serve to justify the family maximum as a work-incentive device. Equalization of the maximum payable in welfare benefits with such level would serve no work-incentive purpose capable of serving as a justification for the family maximum. First, the fact is that on a national basis there is no such correspondence between family maximums and minimum wages. As is indicated in Table 2, *supra,* family maximums range from $108 per month in Mississippi to $353 per month in Oklahoma. Second, the employment pattern typical of AFDC recipients is not represented by the federal minimum-wage paradigm, but is rather characterized by part-time employment consonant with a mother's domestic duties and employment in fields such as domestic service and agriculture, which are exempt from federal minimum-wage legislation. Thus most employment opportunities produce a

level of income lower than that represented by full-time employment at the federal minimum wage. An effective deterrent to reliance on welfare benefits would therefore require benefit levels far lower than those equivalent to the federal minimum wage.

**b. *The work-incentive justification is of relevance to only a small portion of those persons subject to the family maximum.***

Not only is the work-incentive justification insufficient because it applies as well to smaller families and so renders the family-maximum category underinclusive; it also fails because only a small portion of AFDC recipients are employable, free enough of domestic responsibilities to seek employment, and have employment opportunities, thus exposing the majority of large AFDC families to primitive incentives to which they are unable to respond.

Indeed, Maryland acknowledges the unsuitability of most AFDC mothers for work:

> "In the typical mother-headed family receiving AFDC, the mother who is in the home is not working. About 7% of mothers are employed, but their earnings, whether full-time or part-time are below assistance standards so that the family remains eligible on financial need. About 15% of the remaining mothers are physically or mentally incapacitated for employment, and another 11% are noted as having no marketable skills or employment is not available for the kind of work they have done in the past. Fully one-third are noted as being needed in the home full-time to take care of infants or children with various problems such that employment is not feasible if value is placed on child

care. The remaining one-third could be trained or placed in the labor market to varying degrees if day care needs were met." Maryland Dept. of Social Services, *Profile of Caseloads,* Research Report No. 5, at 6 (1969).[20]

In part, as Maryland has recognized, unavailability for employment stems from the pressure of domestic duties:

> "For the *ADC mother,* the proper care of children is the primary consideration. Significant for this consideration are those factors that clarify the availability and adequacy of a plan for the care of children; the ability of the mother to work and continue to be responsible for the care of the child in his day by day living, and the effect that the children's ages, health, and behavior have on the mother's earning capacity. No one decision is to be sought, but the regard for the value of employment to an individual and the participation of the mother in determining her earning capacity need to be part of each decision.
>
> "An examination with the mother of the factors that are pertinent in her situation will provide the basis for the Department's decision relative to resource in earning capacity. For some mothers, the size of the family will be the factor that determines inability to give

[20] "Moreover, the more children a woman has, the shorter her work life will be, on the average, because of the recurring interruption to continuous work or because of extended withdrawal from the labor force . . . [T]he birth of each additional child further reduces the average work life expectancy by from 2 to 3 years." Perrella, "Women and the Labor Force," *Monthly Labor Review* (U.S. Dept. of Labor), Feb. 1968, p. 3.

children care and to work. For other mothers, the living arrangement will be the factor that determines whether or not there is a resource in earning capacity." State of Maryland, Manual of the Dept. of Public Welfare §215.19 (superseded Nov. 1, 1968; emphasis in the original).[30]

In part, unavailability stems from the inferior educational and work experience of AFDC mothers:

"With regard to employability, about one-half of the mothers had education up to the second year of high school. Only 16% graduated from high school and the remainder have only a grade school education of various levels. Twenty-two percent of the mothers never held employment before receiving assistance and of the remainder, the vast majority were domestic workers or unskilled workers in various manufacturing or service industries. Where mothers had worked in the past, the average time span of last employment was less than 2 years. Also for this group, it had been 2.8 years since they last held employment—just about equal to the average length of time of receiving assistance as noted above." *Profile of Caseloads* at 6-7.

In part, the unemployment of AFDC mothers stems from the lack of employment opportunities. As of May 1966 the Maryland State Employment Service estimated that there were 18,760 jobs available in the Baltimore area. At the same time, there were 26,000 unemployed persons actively seeking employment. Appendix at 153.

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[30] This provision has been superseded by regulations adopted under the WIN program, described in subpart c., *infra*.

In short, the family maximum cannot be justified as an employment incentive where only a minority of the persons affected by it are susceptible of responding to such an incentive. The justification is too narrow for the category to be justified. Thus the work-incentive argument fails to explain the classes created by the family maximum. It is at once too broad and too narrow. It fails of congruence with the distinction so completely as to cast doubt on its relevance. As the court below put it,

> "the evidence before us at the original trial was crystal-clear that the only reason why the maximum grant regulation was continued was financial, *i.e.*, that the Governor and General Assembly of Maryland had failed to appropriate sufficient funds to finance the cost of AFDC . . . ." 297 F. Supp. at 467 (1968).

***e. Congress has mandated highly selective work incentives and requirements inconsistent with and preemptive of work-incentive devices that coerce the employable and unemployable alike.***

A Work Incentive Program (WIN) for recipients of AFDC, mandatory on all states, was included in the 1967 Amendments to the Social Security Act.[21] The WIN provisions, described in greater detail below, were supplemented with a requirement that states furnish child-care services for the children of those referred to employment or training[22] and with a requirement that states exempt part of

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[21] P.L. 90-248, 81 Stat. 821, 42 U.S.C. §§602(a)(15), (19), 630-639 (Supp. III, 1969). See also U.S. Dept. of Labor, Work Incentive Handbook (1968); U.S. Dept. of Health, Education, and Welfare, Guidelines for the Work Incentive Program (1969); 45 C.F.R. §220.35, 34 Fed. Reg. 1357 (Jan. 28, 1969).

[22] 42 U.S.C. §602(a)(15)(B)(i).

the recipient's earnings from consideration in computing the amount of the family's grant.[33] The intent of Congress in enacting the WIN provisions was "[t]o give greater emphasis to getting *appropriate* members of families drawing aid to families with dependent children (AFDC) payments into employment";[34] indeed, "certain classes of persons for whom any referral would be inappropriate are specifically enumerated."[35] Congress recognized that the employment potential of AFDC recipients

> "can be realized only with careful planning and with the development of appropriate training, educational, child care, and related resources on the part of the State and local welfare agency."[36]

There are a number of critical respects in which the operation of the WIN program differs from that of a grant maximum as a work incentive. At the outset, those referred to the WIN program must be "appropriate" for referral;[37] certain classes of individuals are specifically

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[33] 42 U.S.C. §602(a)(8)(ii), 602(a)(19)(E)(ii), 634. This "work incentive" differs from a grant maximum in that it rewards the person who works with a total income above minimum subsistence, as opposed to punishing nonworkers by paying only a fraction of subsistence. It is true that persons receiving less than full need as determined by the State of Maryland may retain earnings without diminution of benefits. This was not the case in Arizona, *Dews* v. *Henry*, 297 F.Supp. at 590, and was true only to the extent of $50 in Maine. *Westberry* v. *Fisher*, 297 F.Supp. at 1113.

[34] H.R. Rep. No. 544, 90th Cong., 1st Sess. 3 (1967) (emphasis added).

[35] H.R. Rep. No. 1030 (Conference Report), 90th Cong., 1st Sess. 58 (1967).

[36] H.R. Rep. No. 544 at 97.

[37] 42 U.S.C. §602(a)(19)(A)(i), (ii), and (iii).

exempted from the referral provision[38] and individual determinations are to be made in all other cases. Unlike the assumption, which underlies the grant maximum, that a recipient will be able to find employment on his own, the congressional approach is to require the Secretary of Labor to provide testing and counseling to all those appropriate persons referred to the WIN program and to determine whether they are suitable for regular employment, for institutional and work-experience training, or for special work projects.[39] Participants are assured that appropriate health and safety standards are followed at the work or training project to which they are referred, that prevailing wages will be paid, that working conditions are reasonable, and that workmen's compensation protection is provided.[40] Participants whose relocation is necessary to their permanent employability may, if they wish, obtain assistance in relocating.[41] Work or training may be refused for good cause, and if refused without good cause, intensive counseling is provided.[42]

Congress required administrative fairness at critical stages of the referral process. First, an individual dissatisfied with the determination that he is appropriate for referral has the right to an administrative hearing before

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[38] 42 U.S.C. §602(a)(19)(A)(iv)-(vii). Among those exempted are those suffering from illness or incapacity; those living remote distances from any employment or training to which they could be referred; and those whose continuous presence in the home is required because of the illness or incapacity of another member of the household.

[39] 42 U.S.C. §633(a).

[40] 42 U.S.C. §633(f).

[41] 42 U.S.C. §637.

[42] 42 U.S.C. §602(a)(19)(F).

the state welfare agency.[43] Second, the Secretary of Labor must provide a hearing to determine whether an individual refused without good cause to accept employment or participate in training.[44] All these provisions reflect a congressional determination that providing a work incentive for AFDC recipients is a complex matter, requiring a particularized approach.

Like all other states, Maryland has adopted the necessary enabling legislation[45] and implementing regulations[46] for a full-fledged work incentive program. Maryland now refers appropriate people for training, employment, or special work projects, and terminates the aid of any adult who after sixty days of counseling refuses to participate without good cause. The state also allows the retention of a substantial share of earnings for persons on AFDC. The state has not sought repeal of the Work Incentive Program, nor has it decided to forego federal funding so that it may operate a public assistance program free of the Work Incentive Program.

Whatever its effect as a crude starvation incentive for adult AFDC recipients to seek employment, the primary effect of a grant maximum is to penalize needy dependent children. Congress has now determined that employment of AFDC recipients must be dealt with through a combination of counseling, training, and positive cash rewards rather than punishment of children. The WIN amend-

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[43] H.E.W. Guidelines §42.

[44] 42 U.S.C. §633(g); Work Incentive Program Handbook §412-H-K.

[45] Ann. Code of Md., Art. 88A, §17.

[46] State of Maryland, Manual of the Department of Social Services, Rule 200-IX.

ments expressly proscribe denying public assistance to children living with an adult who refuses to cooperate with the employment procedures contemplated.[47] While such an adult's needs are not considered in computing the amount of the grant (and that only after lengthy counseling), payments must be made on behalf of the rest of the family. Maryland, on the other hand, seeks to justify its denial of aid to children in large families as a measure to force adults into employment. In so doing, it places the family maximum, as a work-incentive program, in direct conflict with the Social Security Act both by utilizing an unselective, blindly overreaching deprivation to force employment out of employable and unemployable alike and by using that very method—denial of aid to children—that the Act proscribes. As this Court said in *King* v. *Smith*, 392 U.S. at 325:

> "Congress has determined that immorality and illegitimacy should be dealt with through rehabilitative measures rather than measures that punish dependent children and that protection of such children is the paramount goal of AFDC."

So also here, Maryland may not punish children to provide employment incentives to their parents, most of whom are not in a position to accept employment.

**2. Family maximums deter desertion.**

Appellants urge that family maximums are justifiable because they deter desertion of families by their fathers; that is, that a father contemplating desertion will be less

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[47] 42 U.S.C. §602(a)(19)(F); 45 C.F.R. §220.35(a)(6), 34 Fed. Reg. 1357 (Jan. 28, 1969).

likely to do so if the consequence of desertion is utter destitution for his family rather than a subsistence existence. The forces that allow a man to desert his family or constrain him from doing so are exceedingly complex and powerful. Whether the differential between a family maximum grant and one commensurate with state-determined need plays a significant role in this highly charged decision is dubious. Indeed, many if not most parents in this situation are likely wholly unaware of the existence of the family maximum. What little evidence is available indicates that Maryland's highly touted marital adhesive is of negligible sticking power. States without family maximums report that 3.9 per cent to 35.7 per cent of their AFDC clientele result from desertion, whereas states invoking the family maximum experience a desertion ratio ranging from 8.3 per cent to 26.6 per cent.[48]

Apart from such demonstrable inefficacy, Maryland's desertion-deterrence rationale is afflicted with the same deficiencies as its work-incentive rationale. If grants below subsistence deter desertion, why are comparable limitations not imposed upon smaller families? Surely the state cannot credibly profess disinterest in desertion of smaller families. Conversely, why subject AFDC families where the father is dead or disabled to the desertion disincentive? To them, the "deterrence" is cruelly irrelevant. Thus as with Maryland's work-incentive argument, the state seeks to justify the family maximum by adverting to policy justifications that call for like treatment of smaller families and are of relevance to only a fraction of those disfavored

[48] U.S. Dept. of Health, Education, and Welfare, Division of Program Statistics and Analysis, Characteristics of Families Receiving AFDC, Nov.-Dec. 1961, Table 12 (Apr. 1963).

by the policy. The policy fails to justify because it implies restrictions broader and narrower than the class to which the family maximum applies.

Also like Maryland's work-incentive rationale, the desertion-deterrence theory suffers from the defect of penalizing children, the intended beneficiaries of AFDC, for the conduct of their parents. As noted by a three-judge district court in invalidating a three-month waiting period for receipt of AFDC that had been defended as a means of "keeping families together": "This legitimate interest is clearly promoted by means impermissible under the federal Act, because it postulates deprivation of the children as the club to keep the parents together." *Damico* v. *California,* —— F. Supp. —— (Civ. No. 46538, N.D. Cal., opinion filed Sept. 12, 1969), unreported opinion at 7.

Moreover, the state of Maryland does not lack deterrents designed in fact to deal with the problem of desertion. Article 27, Sections 88-90 of the Maryland Code provide civil and criminal sanctions, ranging up to incarceration for a period of three years, to deter parents from deserting their children. Just as the WIN program provides Maryland with a specific, detailed program to cope with unemployment among welfare recipients, so the Maryland Code contains provisions designed to deal with desertion, the particularity and sophistication of which expose the speciousness of Maryland's claim that the family maximum constitutes a desertion deterrent.

Finally, there is the fact that Maryland permits the parents to avoid the effect of the family maximum by placing children with other relatives capable of affording a home eligible for AFDC. If one is to traffic in specula-

tions—they are not more—concerning the impact of AFDC benefit regulations upon a man desperately contemplating desertion, what effect will knowledge of these possibilities for avoiding the family maximum have? Will the coldly calculating, fully informed deserter take cognizance of such possibilities and desert as readily as though there were no family maximum? Is this what is indicated by the desertion figures mentioned at the outset, or do those statistics rather indicate ignorance of the entire problem? In any event, they do indicate that desertion is little affected by the presence or absence of a family maximum.

**3. The family maximum as family planning.**

Appellants urge that the family maximum may be justified as a birth-control device. Without repeating demonstrations earlier attempted, we note in passing difficulties of overinclusion and underinclusion. Why is it that birth control takes hold at the sixth and subsequent children, while the fecundity that begat the first five is so easily forgiven?

Even more objectionable than the slippage between means and end is the illegality of the means. However urgent or desirable the limitation of population, one may not lawfully pursue that end by punishing the offspring one wishes were not born. Such a practice would be no more justifiable than the attempted deterrence of extramarital sexual relations condemned on constitutional and statutory grounds in *King* v. *Smith, supra.* As this Court stated in striking down the substitute-father rule,

> "In sum, Congress has determined that immorality and illegitimacy should be dealt with through rehabilitative measures rather than measures that punish depen-

dent children, and that protection of such children is the paramount goal of AFDC. . . . [I]t is simply inconceivable . . . that Alabama is free to discourage immorality and illegitimacy by the device of absolute disqualification of needy children. . . . [T]he method it has chosen plainly conflicts with the Act." 392 U.S. at 325-27.

So also is it inconceivable that a state may, consistently with the Social Security Act, deny public assistance to children to prevent their parents from further procreation. The means chosen to effect the purpose plainly conflict with the Social Security Act. While 42 U.S.C. §602(a)(15)(A)(ii) endorses the adoption of a state plan looking to reducing the incidence of *out of wedlock* births, §602(a)(15)(C) plainly provides "that the acceptance by such child, relative or individual of family planning services provided under the plan shall be voluntary . . . and shall not be a prerequisite to eligibility for or the receipt of any other service or aid under the plan." Just as Alabama was precluded from sacrificing protection of dependent children to deter illegitimate births, so *a fortiori* is the state of Maryland precluded from sacrificing AFDC children to deter legitimate births. Indeed, under the Social Security Act, a state may not deny aid to even the person at whom the birth-control practices are aimed, much less deny aid to a child whose role is merely that of a pawn in the state's game to influence his parent. Surely, to permit family maximums with their implicit denial of aid to children, while proscribing termination of the adult whose fecundity is at issue, would be absurd.

Indeed, even were the Social Security Act's preemptive disapproval of coercive family planning not so clear, a

state could not constitutionally punish a child to influence his parents' behavior. Surely all would agree that, morally speaking, such practice would be a barbaric atavism, and, constitutionally speaking, such practice would reek with overtones of corruption and attainder long anathema to our constitutional tradition. As this Court put the point in *Levy* v. *Louisiana, supra*:

> "We conclude that it is invidious to discriminate against them when no action, conduct, or demeanor of theirs is possibly relevant to the harm that was done the mother." 391 U.S. at 72.

The right to freedom of choice in procreation is clearly a constitutional right. *Griswold* v. *Connecticut, supra; cf. Skinner* v. *Oklahoma, supra.* States are forbidden to withhold payment of benefits because of the exercise of a constitutional freedom. *Sherbert* v. *Verner, supra; Shapiro* v. *Thompson, supra.* See, in general, *Shelton* v. *Tucker,* 364 U.S. 479 (1960), and cases cited. Particularly is such discrimination patently wrong under a statute designed to aid mothers in the best interests of the child.

**4. The family maximum is necessary to save funds and please voters.**

When the Maryland family maximum was first challenged, the state of Maryland dealt more simply (and perhaps more frankly) with the problem of justification for the family maximum. See opinions below. Its purpose was to save money and please the electorate. However plausible these statements of purpose, they are plainly unacceptable as constitutional justifications. Any limitation, any deprivation of a class of public assistance recipients will save money,

which may be spent on other recipients or on monuments to public greatness. The question is not whether a distinction saves money.[49] All deprivations of public assistance save money, however blatantly discriminatory. The question relevant to equal protection analysis is whether the deprived class differs in any meaningful sense from the favored class. To this question, no answer is provided by the observation that more money would be spent if the deprivation were removed.

Similarly, what pleases the electorate can hardly be determinative of equal protection challenges. Unhappily, some electorates prefer discrimination of the most blatant and invidious sort. Indeed, it is just such preferences that the Equal Protection Clause calls upon the judiciary to repudiate.

## II.

**Establishment of an arbitrary ceiling on the amount of an AFDC grant violates the Social Security Act.**

It has been made clear by this Court that "any state law or regulation inconsistent with [the] federal terms and conditions" upon which federal funds are disbursed to the state "is to that extent invalid." *King* v. *Smith*, 392 U.S. at 333, n. 34. In establishing in Point I that a number of the purposes for the maximum grant proffered by the state (work incentive, family planning, desertion disincentive) were not rationally achieved by the classification at issue,

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[49] See, *e.g.*, *Shapiro* v. *Thompson*, 394 U.S. at 633; *Westberry* v. *Fisher*, 297 F. Supp. at 1114-15; *Dews* v. *Henry*, 297 F. Supp. at 592; *Kaiser* v. *Montgomery*, unreported opinion at 7; *Rothstein* v. *Wyman*, 303 F. Supp. at 348.

we necessarily demonstrated that those purposes were being achieved in a manner forbidden by the Social Security Act. Of course this violation of federal mandate constitutes an independent statutory ground for decision. We shall in this section explore one further ground considered by the court below and certain statutory defenses raised by appellants.

**A. *The maximum grant violates the statutory command that aid shall be given to all eligible individuals.***

The Social Security Act requires that a state plan for AFDC "provide . . . that aid . . . shall be furnished . . . to all eligible individuals." 42 U.S.C. §602(a)(10).[1] The establishment of a maximum on the grant an AFDC family may receive, unrelated to its need, violates the statutory mandate in one of two ways: It denies assistance to eligible children whose needs raise the family need above the level of the maximum and which are therefore not considered in determining the amount of the grant, or it conditions the scope of eligibility of each family member on the number of individuals in the recipient family.

First, the imposition of a grant maximum results, for example, in no payment whatever being made on behalf of the fifth child in a family living in Delaware (indeed, the fourth child receives only $1) or in Georgia and in no payment being made on behalf of the sixth child in a family living in Alabama, Maryland, or Tennessee. Similar results obtain in the other states that impose grant maximums. Nothing, however, in the Act's definition of "dependent child" or in any other provision of the Act relates eligibility

[1] See *King* v. *Smith*, 392 U.S. at 317, 333, in which the provision is referred to as 42 U.S.C. §602(a)(9). (It was so numbered prior to the enactment of the 1967 Social Security Amendments.)

for AFDC to the number of persons in an individual's family. Clearly, the fifth or sixth child in a given family is as deprived of parental support as is the second; yet the effect of the grant maximum is to ignore his existence and to deny his eligibility. The maximum grant regulation is thus a clear violation of the congressional mandate that AFDC "be furnished with reasonable promptness to all eligible individuals."

An alternative effect of a grant maximum is to condition the scope of the statutory entitlement established under federal and state AFDC programs on the number of individuals in the recipient family. Under the Maryland maximum, for example, the members of a family of 12 are granted only half the entitlement of the members of a family of six.[2] While some diminution of per-capita entitlement may be justified by economies of scale, neither Maryland nor the other states whose maximum grant schedules have been the subject of litigation have defended such schedules as bearing any relation to actual need.[3] Federal regulations require that "A state plan . . . must . . . provide that the determination of need and amount of assistance for all applicants and recipients will be made on an objective and equitable basis . . ." 45 C.F.R. §233.20(a)(1); 34

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[2] Under a maximum such as California's, which imposes individual maximums on a rapidly declining scale but no overall family maximum, the effect is less onerous but the scope of entitlement is still significantly narrowed with an increase in the size of the family. Thus a family of six in California receives $50 per person ($300 total), while a family of 12 receives only $33 per person ($399 total). The California benefit scale is set out in *Kaiser* v. *Montgomery*, unreported opinion at 4, n. 3.

[3] Economies of scale are reflected in the need standard; the maximum grant reduces aid to large families below the need standard.

Fed. Reg. 1394 (Jan. 29, 1969). Absent such a rational relation between the scope of entitlement and per-capita need, it is just as irrational to condition the extent of the statutory right to receive AFDC on the size of one's family as it would be to condition it on the color of one's hair.

The bases for narrowing entitlement recognized by Congress are found (1) in the requirement that state plans provide that the determination of need shall take other income or resources of the applicant into consideration, 42 U.S.C. §602(a)(7), and (2) the termination of assistance to that member of the family unit who under the WIN program refuses employment or training without good cause, 42 U.S.C. §602(a)(19)(F). *Cf. Doe* v. *Shapiro,* 302 F. Supp. 761 (D. Conn. 1969). Absent any other evidence of congressional authorization for conditioning the scope of eligibility on some characteristic of the recipient family, the mandate that "aid . . . shall be furnished . . . to all eligible individuals" must mean that if the state furnishes aid equivalent to need to a family of six, it must do likewise with respect to a family of 12.

**B. *Congress has not endorsed maximum grants.***

Appellants cite three provisions of the Social Security Act as "recognizing [the] validity of state maximum grant regulations." Brief at 3. An examination of these provisions and their legislative history shows, however, that each represents at most a *de facto* acknowledgement of the existence of grant maximums and that, like the provision at issue in *Shapiro* v. *Thompson,* 394 U.S. at 639, "the statute does not approve, much less prescribe" a system of maximum grants.

**1. Section 402(a)(23).**

Section 402(a)(23) of the Act, 42 U.S.C. §602(a)(23), enacted as part of the Social Security Amendments of 1967, P.L. 90-248, 81 Stat. 821, is well known to this Court as the statute at issue in *Rosado* v. *Wyman*, O.T. 1969, No. 540.[3a] It began its legislative history as an Administration proposal to require states to meet fully their own standard of need as in force during a base period and to reprice that standard by July 1, 1969 and annually thereafter.[4] The bill passed by the House as H.R. 12080, however, excluded any provision requiring an increase in benefit levels.[5] In the Senate Finance Committee the Administration proposal was dropped insofar as it required meeting need in full. The balance of the Administration proposal, requiring in AFDC a cost-of-living adjustment by July 1, 1969 and annually thereafter, was retained, and in place of the payment-of-full-need requirement the Senate Committee modified the language to require that "any maximums . . . on the amount of aid" be proportionately adjusted.[6] Numerous amendments were added on the floor of the

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[3a] The section reads:

"A State plan for aid and services to needy families with children must . . . (23) provide that by July 1, 1969 the amounts used by the State to determine the needs of individuals will have been adjusted to reflect fully changes in living costs since such amounts were established, and any maximums that the State imposes on the amount of aid paid to families will have been proportionately adjusted."

[4] House Committee on Ways and Means, Hearings on H.R. 5710, 90th Cong., 1st Sess. at 59 (1967).

[5] Bureau of Social Science Research, Inc., The Legislative History of Aid to Dependent Children: A Chronological Account and Analysis of the Federal Legislative Process 249 (1969).

[6] S. Rep. No. 744, 90th Cong., 1st Sess. 293 (1967).

Senate, but condition 24 (now Section 402(a)(23)) remained intact.[7] The Senate-House Conference Committee adopted the Senate AFDC cost-of-living provision verbatim, omitting only the requirement for annual updating of need standards after July 1, 1969.[8]

The purpose of the adjustment-of-maximums requirement as part of a provision for "Increasing Income Of Recipients Of Assistance"[9] should be obvious: Without such a requirement, those states imposing grant maximums could nullify the cost-of-living-adjustment requirement by retaining the grant ceilings in force before the adjustment was made. Far from giving its stamp of approval to maximum grants, Congress at most was acknowledging their existence and taking precautions to ensure that they would not be permitted to undercut the intended effect of an ameliorative provision. As with the residency provision at issue in *Shapiro* v. *Thompson, supra*, congressional concern in enacting the cost-of-living-adjustment provision was with alleviating hardships, not with sanctioning restrictive state practices.

Moreover, the adjustment-of-maximums provision applies equally to all devices used by states in decreasing benefit levels below the standard of need, namely, individual maximums, family maximums, and percentage reductions. The Administration's proposed requirement of payment of need in full clearly covered all three. The Administration submitted with its proposal two charts, one depicting the record

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[7] 113 Cong. Rec. 33560 (1967).

[8] H.R. Rep. No. 1030 (Conference Report), 90th Cong., 1st Sess. 63 (1967).

[9] *Id.*

of those states using one or more of these mechanisms, the other expressing in dollar figures the "highest monthly amounts payable for basic needs," including those "amounts resulting from the application of a percentage or flat reduction to the amount of determined need." [10] The Administration clearly did not distinguish among the various methods of benefit reduction in explaining the necessity for requiring payment of full need. The Senate Committee acted on this record in substituting a required adjustment of "any maximums" for the meeting-need-in-full proposal. This substitution was plainly intended to require proportionate adjustments in those states not meeting need in full, by whatever mechanism benefits were reduced. It clearly did not focus on the particular device of the family maximum, which incorporates discriminations that are not present at all in across-the-board percentage reductions and that are present in less onerous form in a system of individual maximums.

**2. Section 406(b).**

Appellants next cite §108(a) of P.L. 87-543, 76 Stat. 172, a provision of the Public Welfare Amendments of 1962 that amended §406(b) of the Act, 42 U.S.C. §606(b). The amendment (since superseded) expanded the definition of "aid to families with dependent children" to include, for the first time, so-called protective payments, that is, payments made to an individual other than the relative with whom the dependent child is living. The provision reflected a concern that "some few [payees] have difficulty in handling their

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[10] House Comm. on Ways and Means, Section-by-Section Analysis of H.R. 5710, 90th Cong., 1st Sess. 37 (1967).

funds so that their children receive the full benefit of the money made available by the State." [11]

The House bill included "a series of safeguarding provisions," one of which required "a meeting of all need as determined by the State." [12] The Senate Finance Committee approved §108 but amended it to specify that if an individual's assistance payment plus other income or resources was equal to his state-determined need, a protective payment would be included within the definition of "aid to families with dependent children" and consequently would be subject to federal financial participation. As explained by the Senate Committee:

> "The effect of this provision is to make it possible for protective payments to be made in behalf of certain ADC recipients in States in which there is a maximum limiting the amount of assistance an individual

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[11] Testimony of Secretary Abraham Ribicoff of the Department of Health, Education, and Welfare before the Senate Finance Committee, *Hearings on H.R. 10606 Before the Senate Comm. on Finance*, 87th Cong., 2d Sess. at 137 (1962). See also H.R. Rep. No. 1414, 87th Cong., 2d Sess. 17 (1962).

[12] H.R. Rep. No. 1414 at 18. See also *id.* at 33-34; Conf. Rep. No. 2006, 1 U.S. Code Cong. & Adm. News, 87th Cong., 2d Sess. 1980 (1962). The House provision read, in relevant part:

> "(b) The term 'aid to families with dependent children' . . . includes . . . (2) payments with respect to any dependent child . . . which do not meet the preceding requirements of this subsection, but which would meet such requirements except that such payments are made to another person who . . . is interested in or concerned with the welfare of such child and relative, but only with respect to a State whose State plan approved under section 402 includes provision for—
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> . . .
>
> (B) meeting all of the need, as determined by the State, of individuals with respect to whom aid to families with dependent children is paid; . . ." H.R. Rep. No. 1414 at 52-53.

may receive. These are the cases in which the statutory maximum does not prevent need from being met in full according to the State's standards." S. Rep. No. 1589, 1 U.S. Code Cong. & Adm. News, 87th Cong., 2d Sess. 1956 (1962).

No Senate debate touched upon the Senate amendment of the House protective-payment provision, and §108 was passed as reported out by the Senate Committee.[13] In the Senate-House Conference Committee the House conferees receded and the Senate amendment became law.[14]

Two facts about the Senate amendment to the House version of §108 make it clear that there was no intention to place a congressional stamp of approval on family grant maximums. The first is the requirement that a state-imposed maximum not affect an individual on whose behalf a protective payment is being made. The second is the reference in the Senate Committee report to "a maximum limiting the amount of assistance an individual may receive." Like the phrase "any maximums" in §402(a)(23), this phrase is equally applicable to all methods of benefit reduction, *i.e.*, individual maximums, family maximums, or percentage factors. There is thus no evidence that Con-

[13] Conf. Rep. No. 2006 at 1980.

[14] *Id.* at 1981. The provision amended subpart (B) of §406(b), *supra* note 12, to read as follows:

"(B) making such payments only in cases in which such payments will, under the rules otherwise applicable under the State plan for determining need and the amount of aid to families with dependent children to be paid (and in conjunction with other income and resources), meet all the need of the individuals with respect to whom such payments are made; . . ." Public Welfare Amendments of 1962, 1 U.S. Code Cong. & Adm. News, 87th Cong., 2d Sess. 236 (1962).

gress focused on the particular discriminations characteristic of the type of maximum here at issue, and there is some evidence that Congress disapproved of maximums, at least to the extent of determining not to extend the option of federally funded protective payments to individuals affected by grant maximums.

**3. Section 1903(f).**

Appellants finally cite another provision of the Social Security Amendments of 1967, §220(a) of P.L. 90-248, 81 Stat. 821, which added to Title XIX of the Act (Medical Assistance) a new §1903(f), 42 U.S.C. §1396b(f). This provision dealt with those individuals for whom federally funded Medical Assistance could be provided on the ground that they were "medically indigent"; it reflected a congressional concern that an upper limit on the income of those eligible as medically indigent needed to be established.[15]

As reported out by the House Ways and Means Committee and passed by the House, §220(a) limited federal financial participation in Medical Assistance benefits to those whose incomes did not exceed 133⅓ per cent of the highest amount of AFDC assistance paid to a family of the same size without any income or resources. An exception to the basic formula was provided, however, authorizing the Secretary of Health, Education and Welfare, "where the operation of a uniform maximum limits payments to families of more than one size, to adjust the income limitation amount to take account of families of different sizes."[16]

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[15] 113 Cong. Rec. 23062 (1967) (remarks of Rep. Byrnes). See also H.R. Rep. No. 544, 90th Cong., 1st Sess. 118 (1967); S. Rep. No. 744, 90th Cong., 1st Sess. 176 (1967).

[16] H.R. Rep. No. 544 at 183.

The Senate Finance Committee substituted a formula based on 150 per cent of the states' standards for Old Age Assistance (OAA), rather than their standards for AFDC, a change "designed to reach the same, perhaps even a greater, magnitude of reduction in Federal obligation as does the House-approved bill" but to do so "in a more equitable, simple, and direct manner."[17] The provision was passed by the Senate and sent on to Conference, where the Senate conferees acceded to the House formula based on 133⅓ per cent of the AFDC payment level.[18] As enacted, the relevant portion of the amendment provides:

> "If the Secretary finds that the operation of a uniform maximum limits payments to families of more than one size, he may adjust the amounts otherwise determined under clause (i) to take account of families of different sizes." 42 U.S.C. §1396b(f)(1)(B)(ii).

The intent of this savings clause was clearly to avoid penalizing those who would qualify as medically indigent but for the operation of an AFDC grant maximum. Far from approving the imposition of grant maximums, the provision was designed to prevent their imposition on those who would otherwise be eligible for Medical Assistance benefits under Title XIX. Congress was here not directly concerned with, and thus cannot be considered to have passed on the validity of, grant maximums under Title IV; it was concerned, however, with avoiding an extension of the arbitrariness of such maximums into Title XIX.

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[17] S. Rep. No. 744 at 176.

[18] Conf. Rep. No. 1030, 90th Cong., 1st Sess. 63 (1967).

## CONCLUSION

The Court should hold that the imposition of an arbitrary maximum on the amount of an AFDC grant is violative of the Equal Protection Clause of the Fourteenth Amendment and of the Social Security Act in that it creates a disadvantaged class of large families, which classification does not further, but subverts, the purposes of the Social Security Act and is not rationally related to any permissible state interest. The decision of the court below should be affirmed.

Respectfully submitted,

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# APPENDICES

# APPENDIX A

## Details of AFDC Maximum Grant Schedules, by Type and State

### TABLE 1

States (6) with AFDC Family Maximums But No Individual Maximums

| *State* | *Amount* |
|---|---|
| Kentucky[1] | $320 |
| Maryland[2] | $250 |
| New Mexico[3] | $190 |
| Virginia[4] | $245 |
| Washington[5] | $325 |
| West Virginia[6] | $165 |

[1] The maximum shown is for families of seven or more in industrial counties; maximum is $270 in other counties. Maximum for families of from one to six persons is $270 in industrial counties, $220 in other counties. Source: Ky. Dept. of Economic Security, Public Assistance Manual of Operation §2910 (10/69).

[2] The maximum shown is for families living in the City of Baltimore; maximum elsewhere in the state is $240. Maximum enjoined in *Williams* v. *Dandridge*, 297 F. Supp. 450 (D. Md. 1968, 1969).

[3] Source: N. Mex. Health & Social Service Dept., Worker's Manual §221.846 (6/1/69).

[4] Source: Va. Dept. of Welfare & Institutions, Manual of Procedure §215.3A (Bulletin #482 7/1/69).

[5] Maximum enjoined in *Lindsey* v. *Smith*, —— F. Supp. —— (Civ. No. 7636, W.D. Wash., N.D., opinion filed Aug. 20, 1969).

[6] Source: W. Va. Dept. of Welfare—Family Services, Manual of Policy & Procedures §1610.4 (5/1/69).

## TABLE 2

STATES (10) WITH AFDC FAMILY MAXIMUMS COMBINED WITH INDIVIDUAL MAXIMUMS
(Amounts include allowance for one adult caretaker.)

| State | Cumulative Amounts Based on Number of Children 1 | 2 | 3 | 4 | 5 | 6 | Fa... Maxi... |
|---|---|---|---|---|---|---|---|
| Alabama[1] | $ 50 | $ 80 | $110 | $140 | $170 | $170 | $17... |
| Arizona[2] | 80 | 107 | 134 | 161 | 188 | 215 | 2... |
| Arkansas[3] | 65 | 75 | 85 | 95 | 105 | 115 | 1... |
| Delaware[4] | 125 | 137 | 149 | 150 | 150 | 150 | 1... |
| Georgia[1] | 71 | 102 | 133 | 164 | 164 | 164 | 1... |
| Maine[5] | 80 | 110 | 137 | 164 | 191 | 216 | 2... |
| Mississippi[6] | 30 | 48 | 60 | 72 | 84 | 96 | 1... |
| Oklahoma[7] | 141 | 180 | 218 | 249 | 283 | 309 | 3... |
| Tennessee[1] | 97 | 113 | 129 | 145 | 150 | 150 | 1... |
| Wyoming[8] | 170 | 200 | 200 | 215 | 215 | 215 | 2... |

[1] Source: Telephone conversation November 19, 1969 with National Ce... for Social Statistics, Social and Rehabilitation Service, U.S. Dept. of Hea... Education, and Welfare. All amounts effective July 1, 1969.

[2] Maximum enjoined in *Dews* v. *Henry*, 297 F. Supp. 587 (D. Ariz. 1969).

[3] Source: Ark. Dept. of Pub. Welfare, Manual §2360.3 (4/1/69).

[4] Source: Del. Dept. of Pub. Welfare, Public Assistance Manual §... (10/67); verified by telephone November 20, 1969.

[5] Maximum enjoined in *Westberry* v. *Fisher*, 297 F. Supp. 1109 (D. ... S.D. 1969).

[6] Source: Miss. Code §7173 (1968); Miss. Dept. of Public Welfare, Manu... Section E, Table VIII (1/1/69).

[7] Source: Okla. Dept. of Pub. Welfare, Manual, Appendix C-1 (8/1/6...

[8] Source: Wyo. Dept. of Public Welfare, Manual §442 (1/64); verified ... telephone November 20, 1969.

# TABLE 3

## States (7) With Individual AFDC Maximums But No Family Maximum

### Alaska[1]

| A. Adult in assistance unit | | B. No adult in assistance unit | |
|---|---|---|---|
| No. of Children | Amount | No. of Children | Amount |
| 1 | $105 | 1 | $ 50 |
| Each additional | 40 | Each additional | 40 |

### California[2]

| A. Children living with one parent or other relative | | B. Children living with two eligible parents | |
|---|---|---|---|
| Number of Children | Amount | Number of Children | Amount |
| 1 | $148 | 1 | $106 |
| 2 | 172 | 2 | 191 |
| 3 | 221 | 3 | 239 |
| 4 | 263 | 4 | 282 |
| 5 | 300 | 5 | 318 |
| 6 | 330 | 6 | 349 |
| 7 | 355 | 7 | 373 |
| 8 | 373 | 8 | 392 |
| 9 | 386 | 9 | 404 |
| 10 | 392 | 10 | 411 |
| 11 | 399 | 11 | 417 |
| 12 | 405 | 12 | 424 |
| 13 | 412 | 13 | 430 |
| 14 | 418 | 14 | 437 |
| 15 | 424 | 15 | 448 |

Plus $6 for each additional child.

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[1] Source: Alaska Dept. of Health & Welfare, Div. of Public Welfare, Staff Manual §4300 (5/17/68); verified by telephone November 20, 1969.

[2] Maximums enjoined in *Kaiser* v. *Montgomery*, —— F. Supp. —— (Civ. No. 49613, N.D. Cal., opinion filed Aug. 28, 1969).

### INDIANA[3]

| A. Adult in assistance unit | | B. No adult in assistance unit | |
|---|---|---|---|
| No. of Children | Amount | No. of Children | Amount |
| ($25 for adult, if incapacitated) | | | |
| 1 | $100 | 1 | $ 50 |
| Each additional | $ 25 | Each additional | $ 25 |

### MISSOURI[4]

| No. of Children | Amount |
|---|---|
| ($33 for an adult) | |
| 1 | $ 46 |
| Each additional | $ 26 |

### NEBRASKA[5]

| No. of Children | Amount |
|---|---|
| 1 | $110 |
| Each additional | $ 30 |

### NEVADA[6]

| No. of Children | Amount |
|---|---|
| ($25 for an adult) | |
| 1 | $ 25 |
| Each additional | $ 25 |

Plus 20 per cent of any unmet need.

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[3] Source: Ind. State Welfare Dept., Public Assistance Manual, Chap. 1, Chart III (8/69).

[4] Source: Telephone conversation November 19, 1969 with National Center for Social Statistics, Social and Rehabilitation Service, U. S. Dept. of Health, Education and Welfare. Amounts effective July 1, 1969.

[5] Source: Neb. Dept. of Public Welfare, State Plan and Manual §IX-4810 (7/67); verified by telephone November 20, 1969.

[6] Source: Nev. Dept. of Health, Welfare, and Rehabilitation, Div. of Welfare, Manual §2-05-033 (7/1/69).

## UTAH[1]

| No. of Persons in Assistance Unit | Amount |
|---|---|
| 1 | $ 90 |
| 2 | 138 |
| 3 | 163 |
| 4 | 185 |
| 5 | 205 |
| 6 | 226 |
| 7 | 246 |
| 8 | 260 |

Plus $14 for each additional child.

[1] Source: Telephone conversation November 19, 1969 with National Center for Social Statistics, Social and Rehabilitation Service, U. S. Dept. of Health, Education and Welfare. Amounts effective July 1, 1969.

## APPENDIX B

### Effects of Grant Maximums on Plaintiffs in Adjudicated Cases

| State | Family Size | Need | Other Income | Grant | Amount Which [illegible] Exceeds [illegible] Plus Other Income |
|---|---|---|---|---|---|
| Maryland (*Williams* v. *Dandridge*) | | | | | |
| Gary | 10 | $331.50 | — | $250.00 | $ 81.5[illegible] |
| Williams | 9 | 296.15 | — | 250.00 | 46.1[illegible] |
| Maine (*Westberry* v. *Fisher*) | | | | | |
| Westberry | 12 | 643.86 | $156.62 | 143.38[1] | 343.8[illegible] |
| Martin | 10 | 514.36 | — | 250.00 | 264.3[illegible] |
| Arizona (*Dews* v. *Henry*) | | | | | |
| Dews | 13 | 418.00 | 213.70 | 6.30[2] | 198.0[illegible] |
| Inclan | 14 | 490.00 | 167.00 | 53.00[2] | 270.0[illegible] |
| Washington (*Lindsey* v. *Smith*) | | | | | |
| Lindsey | 14 | 662.20 | — | 325.00 | 337.2[illegible] |
| Dillard | 11 | 444.49 | — | 325.00 | 119.4[illegible] |
| Latham | 9 | 355.60 | — | 325.00 | 20.6[illegible] |
| Sutton | 9 | 470.65 | — | 325.00 | 145.6[illegible] |
| Rush | 13 | 554.10 | — | 325.00 | 219.1[illegible] |
| Washington | 8 | 335.60 | — | 325.00 | 10.6[illegible] |
| Olsen | 8 | 371.25 | — | 325.00 | 46.2[illegible] |
| California (*Kaiser* v. *Montgomery*) | | | | | |
| Kaiser | 5 | 300.00 | — | 263.00 | 37.0[illegible] |
| Hood | 12 | 532.00 | — | 399.00 | 133.0[illegible] |

[1] Amount of grant is determined by subtracting income from "maxi[illegible] budgeted need" of $300 and paying that amount or grant maximum of $[illegible] whichever is less.

[2] Amount of grant is determined by subtracting income from grant ma[illegible] mum of $220.

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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1969

## No. 131

EDMUND P. DANDRIDGE, JR., CHAIRMAN OF THE MARYLAND STATE BOARD OF PUBLIC WELFARE, ET AL.,
*Appellants*,

v.

LINDA WILLIAMS, ET AL.,
*Appellees*.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND

## REPLY BRIEF FOR THE APPELLANTS

## ARGUMENT

### INTRODUCTION

Before considering the arguments advanced in the Brief for Appellees, reference should be made to two features of the introductory portions of that brief which have some bearing upon determination of this case. Appellees' "Statement" elaborately recites the facts relating to the individual situations of the exceptionally circumstanced named plaintiffs, as contained in the stipulation of facts below (A. 71). It should be noted that the stipulation, in addition to reciting the income, expenditures budget and welfare payments made to the named plaintiffs, also makes

reference to the additional receipt, by the named plaintiffs of substantial benefits in kind, such as those provided the plaintiff Williams, by the federal food stamp program (A. 73) and medical assistance received (A. 72, 74). Such income in kind cannot operate to reduce the amount of welfare grants by reason of the provisions of the federal food stamp regulations (7 C.F.R. 1601.1 (c) & (d) and the federal legislation relating to medicaid.[1]

Appellees also, in summarizing the questions presented, suggest that one objectionable feature of the Maryland regulation is that it "in effect treat(s) the family as the proper unit of assistance" (Brief for Appellees, page 2) Appellants do not accept the suggestion that the validity of the Maryland regulation under the Social Security Act can be deemed to turn on the question whether the Maryland regulation "treat(s) the family as the proper unit of assistance". Even if this is deemed the approach of the Maryland regulation it is an approach fully consistent with federal law, which has traditionally, with some exceptions, adhered to the "cash benefit" principle requiring benefits for a family to be paid in a lump sum to the family head.[2]

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[1] Such benefits in kind payable to welfare recipients are far from insubstantial as recognized in Rein, *Choice and Change in the American Welfare System*, 1969, The Annals 89 at 108 (cited at page 16 of appellees' brief) which points out that such benefits in kind aggregate approximately 6.0 billion dollars for the fiscal year 1970, citing for this proposition Budget of the United States, Fiscal Year 1970 Special Analysis, Table M-9, page 185.

[2] See Cohen, *Factors Influencing the Content of Federal Public Welfare Legislation*, 1954 Social Welfare Forum 199 (1954). In addition, appellees' position is scarcely given support by the terms of the 1962 amendments to the Social Security Act (Public Law 87-543, Title I, Section 104 (a) (i), 76 Stat. 185) changing the designation of the federal program to "Aid and Services to Needy Families with Children" in substitution for the preceding title "Aid to Dependent Children", "in line with the new emphasis on family services" (1962 U.S. Code Cong. and Adm. News at 1955).

## I.

### APPELLEES HAVE ENTIRELY FAILED TO RESPOND TO APPELLANTS' CHALLENGE TO THE PROPRIETY OF JUDGING STATE ECONOMIC REGULATIONS "ON THEIR FACE".

The Brief for Appellees as well as the *Amici* Brief in support of their position, significantly ignores the substantial point made at pages 21 to 26 of Appellants' Brief: that whatever the validity or invalidity of the regulation as applied to the situation of the named plaintiffs, judgment of state economic regulations "on their face", and concomitant invalidation of them for "underbreadth" or "overbreadth" is not proper. The question whether a state economic regulation may be properly invalidated *in toto* on such grounds is a question of overriding importance far surpassing in significance any other questions relating to welfare maximums. To uphold the invalidation *in toto* by the court below would be to accord federal district courts a power over state economic regulations similar in nature to that exercised by state governors accorded veto power. The exercise of judicial power over state legislation has traditionally been confined to the protection of the fundamental rights of individuals or members of classes ascertained to be fairly represented by such individuals. The cases invalidating legislation for overbreadth are an exception to this rule founded upon the view that the mere existence of a statute, as distinct from its application, will operate to deter persons not before the court from the exercise of fundamental rights. This consideration has no bearing in litigation over economic questions.

As noted, appellees have failed to address themselves to this phase of Appellants' Brief, unless their statement that the regulation is "grossly overinclusive" (Appellees' Brief, page 7) is to be deemed their response. In appellants' view, addition of the word "grossly" to the terminology

relating to overbreadth utilized in the opinion of the district court does not render a first amendment rule applicable to economic cases. It should be further pointed out that the statement that the regulation is "grossly overinclusive" embodies a quantitative judgment which courts are ill-equipped to make and which could not be founded upon the record before the district court in this case. In support of their conclusion that the regulation is "grossly overinclusive", appellants make a number of factual statements that are simply insupportable. They first state that "only a relatively small number of families receive AFDC assistance as a result of parental desertion" (Brief for Appellees, page 8). In fact, as noted in the initial opinion of the court below, the absent parent subcategory of dependent children "is the fastest growing subcategory of need" (A. 96) and has also been authoritatively described as "the largest AFDC category" (A. 96, 113 Congressional Record (Daily Edition) 10670 (Remarks of Representative Mills)).

Appellees further represent that the work incentive program under the 1967 Social Security Amendments "has completely pre-empted whatever limited efficacy the maximum grant regulation might have had in inducing parents of large AFDC families to seek employment" (Brief for Appellees, page 7). In fact the new work incentive program as a means of inducing such parents to seek employment has, to date, been of limited effectiveness.[3] More-

[3] As of June 30, 1969, 194,531 welfare recipients throughout the nation had been found appropriate for referral to work incentive programs, as of that date only 143,371 had been actually referred and only 80,607 had been actually enrolled in training programs. Only 84,753 spaces in training programs were approved prior to July 1, 1969. (Chart — "AFDC: Work Incentive Program — Numbers of Recipients Assessed for Appropriateness for Referral, found Appropriate for Referral, Referred for Enrollment, Enrolled, and Training

over, it, unlike the maximum grant regulation, results in added costs — costs which led Maryland to postpone its implementation of the third phase of the program to the maximum extent allowable under federal regulations.

Appellants also represent that the "*sole* purpose (of the maximum grant regulation) is to coerce mothers of large AFDC families to seek employment" (Appellees' Brief, page 7), since employable male family members are required to seek employment as a condition of eligibility. Given the limited effectiveness of administrative means of encouraging employment (see Comment, *Compulsory Work for Welfare Recipients under the Social Security Amendments of 1967*, 4 Colum. J. L. & Soc. Prob. 197 (1968)), the maximum grant regulation cannot be deemed without effect on male as well as female applicants. Moreover, it must be pointed out that the work incentive program, unlike the maximum grant regulation, does not provide for the retention of all earnings above the welfare grant, but only the retention of the first 30 dollars plus one-third of additional earnings.

Appellees also overstate the exemption for mothers contained in the 1967 work incentive amendments. The exemption in fact is confined to "persons whose presence in the home on a substantial basis is required because of the illness or incapacity of another member of the household" (42 U.S.C.A. § 602 (a) (18) (A) (vii), and see the discussion of the legislative history at pages 23 and 24 of Appellants' Brief).

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Spaces, with Percentage Comparisons by Region and State through June 30, 1969" (Preliminary, subject to revision)), prepared by National Governors' Conference, Office of Federal-State Relations.

## II.

### THE APPELLEES MISSTATE THE TRADITIONAL STANDARD OF REVIEW APPLICABLE TO STATE ECONOMIC LEGISLATION.

The appellees take the position that the appropriate standard of review to be applied to this case is the standard applicable to basic political and civil rights — the standard applied in such cases as *Williams v. Rhodes*, 393 U.S. 23 (1968) (elections); *Shapiro v. Thompson*, 394 U.S. 618 (1969) (right to travel); *Harper v. Virginia Board of Elections*, 383 U.S. 662 (1966) (voting franchise) and *Levy v. Louisiana*, 391 U.S. 68 (1968) (rights of illegitimate children) (Appellees' Brief, page 12). They maintain this standard is what they characterize as the "traditional" standard applicable to economic legislation, and maintain that even under the "traditional" standard the regulation is invalid. However, in fact, appellees have cited none of the cases embodying the traditional standard applicable to state economic legislation. All of the cases which they refer to as embodying the "traditional" standard are in fact cases involving either suspect classifications or political rights. However, the proper standard applicable to state economic legislation is not that found in the cases cited by appellees such as *McLaughlin v. State of Florida*, 379 U.S. 184 (1964) (race); *Rinaldi v. Yeager*, 384 U.S. 305 (1966) (criminal law); *Carrington v. Rash*, 380 U.S. 389 (1965) (voting franchise); *Yick Wo v. Hopkins*, 118 U.S. 356 (1886) (race and alienage).[4]

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[4] Appellees also rely on *Truax v. Corrigan*, 257 U.S. 312 (1921); *Truax v. Raich*, 239 U.S. 33 (1915); *Southern Railway v. Green*, 216 U.S. 400 (1910), and *Gulf v. Ellis*, 165 U.S. 150 (1897) as embodying the standard presently applicable to state economic legislation. But the approach of *Truax v. Corrigan* and like cases has long since been repudiated. See *International v. Vogt*, 354 U.S. 284, 287-89 (1957). It should also be noted that the percentage increase in money payments under federally assisted public welfare programs in Maryland between 1957 and 1967 was 218%, the highest in the nation

The cases announcing the standard applicable to state economic legislation are the cases referred to in the recent decision of this court in *McDonald v. Board of Election Commissioners*, ..... U.S. ..... (1969) — cases such as *McGowan v. Maryland*, 366 U.S. 420 (1961); *Lindsley v. Natural Carbonic Gas Co.*, 220 U.S. 61 (1911); *Williamson v. Lee Optical Co.*, 348 U.S. 483 (1955) and *Ozan Lumber Co. v. Union County National Bank*, 207 U.S. 251 (1907). See *Snell v. Wyman*, 281 F. Supp. 853, affd. 89 S. Ct. 553 (1969); *Lampton v. Bonin*, 299 F. Supp. 336 (1969). Extended demonstration is not necessary to indicate that the maximum grant regulation with its several rational bases (Appellants' Brief pages 32-41) does not run afoul of the standards of these cases.

## III.

### THE MAXIMUM GRANT REGULATION IS RATIONAL AS A WORK INCENTIVE.

In denying the relatively self-evident proposition that imposition of a ceiling on welfare grants with allowance for retention of earnings above the ceiling operates as a work incentive appellees advance several propositions. The basic proposition is that the objective of encouraging employment — an objective this court in *Shapiro v. Thompson* recognized as a permissible state interest in the design of welfare programs notwithstanding the relationship of such programs to the relief of need (see *Shapiro v. Thompson*, 394 U.S. 618 at note 20), may be better attained through the use of other devices such as the work incentive program. But the very article that they cite, Rein, *Choice and Change in the American Welfare System*, 1969

(A. 120) — a fact casting doubt on appellees' postulate that like the District of Columbia residents in *Hobson v. Hansen*, 269 F. Supp. 401 (D.D.C. 1969), they are "disenfranchised".

*The Annals* at 89, makes clear that programs of wage supplements such as those implemented in the work incentive program and those proposed by the Administration in its new family assistance plan are in themselves not without defects insofar as they cause the income of recipients of wage supplements to exceed that of persons who derive their sole income from either work or welfare. In considering this aspect of a wage supplement or work incentive program, Rein observes:

> "Welfare and employment are widely regarded as alternative rather than complementary or overlapping sources of income * * * this is consistent with the theory of public assistance that is embodied in the original Social Security Act of 1935 which assumed that social insurance protected members of the labor force when their income was interrupted, while federally financed social assistance was for the unemployable (at 100).
>
> The separation between benefits and wages can, of course, be achieved by policies designed either to keep benefit levels low or to keep wage rates high. The low benefit approach has an ancient history (at 103)."

Appellees observe that the principle of less benefit finds one of its previous, though not its earliest, manifestations in the Poor Law of 1834, "part of the England of Charles Dickens" (Appellees' Brief, page 14). Rein, in the article cited by appellants points out that a similar approach continues to play a part in British welfare legislation in the England of the Beveridge Report:

> "The English have tried to resolve this awkward policy problem by a system of wage-stops, which prevents a worker entitled to welfare benefits from getting more in benefits, regardless of his needs, than he could have earned when he was employed. Here is the principle of 'less eligibility' at work in the mid-twentieth century under a Labour Government" (at 107).

The pertinent British legislation is the Ministry of Social Security Act 1966 (Chapter 20), Schedule 2, Section 5 (46 Halsbury's Statutes of England (2d ed.), 494, 501, 520). That enactment provides that the weekly allowance payable to a head of family with respect to himself and his dependents under the national assistance program plus part-time earnings shall not "exceed what would be his net weekly earnings if he were engaged in full-time work in his normal occupation". This limitation is mandatory in all cases where it is determined "that the right of any person to a supplementary allowance shall be subject to the condition that he is registered for employment * * * " (Ministry of Social Security Act 1966, Chapter 20, Schedule 2, Section 5). In addition, this grant limitation may be applied to other persons who, by reason of temporary circumstance are not subject to the condition that they be registered for employment.

The continuance in effect in modern England of this legislation, in a system which has as its objective determination of grants according to ascertained need, should provide a sufficient answer to the appellees' contention that the use of maximum grant regulations as a work incentive is unconstitutional by the traditional standards applicable to state economic legislation.

Appellees also assert that the irrationality of the maximum grant regulation as a work incentive is demonstrated by the fact that it was applied to AFDC recipients prior to extension of the AFDC program to certain unemployed but employable persons in 1961 (Brief for Appellees, page 14, note 11). This argument rests on the proposition that the only potentially employable persons eligible for AFDC are those persons whose eligibility is due to unemployment (AFDC-U). But, in fact, many persons in the AFDC-

disabled category may be potentially employable on a part-time basis and many employable persons are rendered eligible for AFDC benefits by reason of the absence of a parent from the home. It is not accurate to state that "employable persons were not covered" prior to 1961. It is only accurate to state that persons whose sole basis of eligibility was unemployment were not covered prior to 1961.

Appellees also make the point that the Maryland maximum cannot be deemed to be rationally related to work incentives since changes in it have generally been related to cost of living changes rather than changes in prevailing wage rates. Appellees' statement is not a fully accurate characterization of the materials in the record relating to the basis for adjustment of the maximum grant regulation (A. 114-116, 129-144, 194).

Appellees further assert that very few heads of families receiving AFDC benefits are potentially employable and that "mothers are rarely employable persons" (Appellees Brief, page 16). This proposition is not supported by at least one of the more recent studies on the subject. See Warren and Berkowitz, *The Employability of AFDC Fathers and Mothers,* Welfare in Review, July-August 1969. It is true as appellees suggest that present Maryland regulations implementing the work incentive program restrict referral of some categories of mothers on the basis of family size and on the basis of such countervailing factors as "the availability or unavailability of older children in the home". The availability of day care centers also enters into these determinations. The initial statistics relating to the number of welfare recipients found appropriate for referral for employment under the WIN program indicate that the several states vary widely in the percentage of recipients found eligible for referral for employment. It

must be borne in mind that we are here concerned not with the judgments made by particular state welfare departments at particular times but with the general validity of maximum grant regulations as a matter of federal constitutional law. Many states take the view that a large majority of welfare heads of families are potentially employable, and, as noted, that view is not without support in the social science literature. Appellees dispute the state's suggestion that the situation of the named plaintiffs, all of whom are unemployable as a result of illness or disability, is exceptional. Again, the statistics relied upon by appellees themselves reveal that a substantial majority of both poor adult males and poor adult females are not ill or disabled and that the largest single cause of welfare dependency is the absence from the home of an adult male (A. 154).

It is undoubtedly true that when the aged, the blind, and young children in AFDC families are included, statistics may validly show that only a very small percentage of the total universe of welfare recipients are employable. When attention is restricted to the *heads* of AFDC families the employable percentage is much larger and depends upon the definition of employability used in a state and the attitude taken toward the necessity for the full-time presence of the mother in the home.

The balance of appellees' argument relating to the regulation as a work incentive proports to show that the regulation is under-inclusive. However, the potential welfare benefits of heads of smaller families are less high than those payable to larger families and payments of need in full to heads of such families operate as less of a disincentive to employment since the benefits payable to smaller families do not approach the minimum wage. As the *Williamson* case makes clear, the state has the right to address itself to the most pressing cases first.

## IV.

### THE REGULATION IS RATIONAL TO AVOID DISINCENTIVES TO FAMILY SOLIDARITY.

Plaintiffs urge that the maximum grant regulation is irrational as a means of avoiding incentives to desertion and like evils because it does not operate to discourage desertion in small families. But when the benefits to be secured by desertion do not substantially exceed the minimum or average wage level, the incentive to desertion resulting from welfare programs is much more limited. Appellees also minimize the significance of the regulation as a means of discouraging abandonment of families, observing that a 1966 report of the Maryland Legislative Council "showed that only 15.2% of AFDC families were eligible for assistance because of parental desertion" (Appellees Brief, page 22, citing A. 154). However, the report referred to by appellees also indicates that a very high percentage of AFDC cases were created by causes closely related to desertion. Thus, in addition to the 15.2% of cases attributable to desertion, 31.3% were due to the fact that the father was not married to the mother, 14.0% were due to separation without court decree and 5.0% were due to divorce or legal separation, a total in the four categories of 65.5%. Moreover, the percentage might have been much higher had the maximum not been in effect. Thus, it cannot be said that the maximum grant regulation viewed as a means of avoiding incentives to family break-up is "a classification that penalizes 85% of its members for the purpose of affecting the behavior of the remaining few". That the availability of high welfare benefits has some relationship to the creation of the category of assistance cases in which no marriage has taken place as well as the category in which there has been desertion or separation

is the view of at least some authorities. See the article by Moynihan cited at page 40 of the Brief for Appellants.[5]

## V.

### THE REGULATION IS RATIONAL AS A LIMITATION ON STATE ASSUMPTION OF PARENTAL CHILD SUPPORT OBLIGATIONS.

The validity of the regulation as a limitation on the extent to which the state will provide subsidies for child support to welfare recipients not provided to the public generally is evident. What plaintiffs seek in this litigation is essentially a judicially conferred family allowance system limited to welfare recipients. The family allowance systems of those European nations possessing them found their origin in concern related to inadequate population. The comprehensive study of the British family allowance system carried on by the British Royal Commission on Population of 1949 (cited at page 41 of Appellants' Brief) recognized that the premises of a family allowance system would be called into question if a stable as distinct from ascending population became an objective of British social policy. This observation is pertinent in considering appellees' claim to a family allowance system benefiting only persons who, with or without government subsidy, are most lacking in material means to bring up children.

In arguing for a rule which would amount to constitutional compulsion of a family allowance for families in the limited categories included in the AFDC program (but

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[5] See also the report of the Maryland Commission to Study Problems of Illegitimacy among the Recipients of Public Welfare Monies in the Program for Aid to Dependent Children (1961) at 17, 73. Peculiarly puzzling is the statement of *amici curiae* that the maximum grant regulation does not operate to limit desertion because the majority of recipients do not know of it (Amicus Brief, page 45). If benefits on the order of $400-500 per month were available by reason of invalidation of maxima, it is likely that their availability would become known to potentially affected recipients.

not for other families, poor or otherwise), respondents urge that to impose limitations upon such an allowance would invalidly "discourage procreation only among welfare recipients" (Appellees' Brief, page 23). They urge that the limitation is invalidly discriminatory by reason of the fact that it "penalizes families with seven or more for the birth of additional children" which is said to be an invalid discrimination visited "upon those who do not believe in artificial means of controlling birth" (Appellees' Brief, page 24). One of the difficulties with this argument is that it proves too much. By the same standard child support laws could be characterized as unconstitutionally discriminatory against parents of large families, whose support obligations are necessarily larger than those of parents with smaller families, and it could similarly be urged that the state's action in throwing any obligations of child support upon parents constituted invalid "discouragement (of) procreation". To state these consequences of appellees' arguments is only to dramatize the extent to which they would require the state to eliminate the normal economic checks on population increase on behalf of the class purportedly represented but not on behalf of other equally poor families. The maximum grant limitation is more properly viewed not as a discriminatory restriction imposed upon the class represented by appellees but rather as a rational limitation upon benefits made available to that class but not made available to the 'working poor' or the public at large. At a time of rising concern with population increase it would also seem unwise to foster as a constitutional principle the notion that all benefits made available to families must be made available upon a per capita basis. While respondents properly suggest that there are constitutional restrictions against infringement by government of marital privacy, nothing in the cases involving criminal sanctions and compulsory

sterilization upon which they rely requires the state to make available to AFDC recipients per capita benefits not extended to the public generally or requires all programs of family aid to be designed on a per capita basis.[6]

## VI.

### THE REGULATION IS RATIONAL AS A MEANS OF MAINTAINING EQUITY BETWEEN WELFARE AND WAGE-EARNING FAMILIES.

The rationality of the regulation as a means of maintaining an equity between welfare and wage earning families is evident. The appellants urge that assertion of this purpose is assertion of the "right to be arbitrary rather than a valid defense of the maximum regulation" (Appellees' Brief, page 25). The recent report of the President's Commission on Income Maintenance Programs supplies an effective answer to this assertion, containing as it does repeated references to the undesirability of permitting welfare payments to reverse the order of families upon the income scale. Similar concerns are expressed in Rein, *Choice and Change in the American Welfare System*, 1969 The Annals 89, cited at page 16 of the Brief for Appellees. This argument as to rationality is not only an argument founded on political expediency but also upon the public sense of justice as related to wage earning families — surely not an inadmissible constitutional criterion. Plaintiffs are concerned only with increasing their own income vis-a-vis

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[6] The appellees urge that the regulation is invalid as applied to families which were already large when application was originally made for AFDC. While grandfather clauses in legislation may on occasion be valid they are scarcely constitutionally compelled if the regulation is valid in the generality of its applications. In any event, it is not asserted that the appellees' families were already large as of the date when the maximum grant regulation was instituted in the 1940's, and that, rather than the date of their individual applications, would appear the appropriate point of reference in determining the validity of the regulation as applied to them.

that of other members of the welfare population (and possibly at the expense of other members of the welfare population). Allowance of their claims will exacerbate the graver inequities which already exist between the lot of welfare recipients and that of the "working poor".

## VII.

### THE REGULATION IS RATIONAL AS A MEANS OF ALLOCATING LIMITED STATE FUNDS TO FULLY MEET NEEDS OF THE LARGEST POSSIBLE NUMBER OF FAMILIES.

The respondents further allege that the regulation is irrational as a means of allocating public funds to fully meet state determined need of the largest possible number of families. This argument is founded on the notion that "under the Social Security Act the intended direct beneficiary is the dependent child" (Appellees' Brief, page 25). The difficulty with this position is clear when the pertinent revisions of the Social Security Act relating to "aid to *families* with dependent children" are considered (see infra page 17). Large families are not disqualified from benefits but receive payments at least equal to those paid smaller families. In any case, whatever the merits of appellees' argument with respect to the intended beneficiary under the Social Security Act, the asserted purpose is still rational where the issue is the *constitutional* issue of equal protection, since the Social Security Act itself requires payments for child support to be made in a lump sum to the head of the family, save in exceptional circumstances.[7]

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[7] *Amici Curiae*'s (Center on Social Welfare Policy, et al) attempt to induce the court to invalidate not merely family but individual maximums (*Amici curiae* Brief, pp. 6-11) runs afoul of the fact that the validity of such maximums is not involved in this case. It is not clear whether *amici* would have the court invalidate also the individual maximums unrelated to need embodied in the federal reimbursement formula, the obvious inspiration for state individual maximums. See

## VIII.

### THE REGULATION IS CLEARLY VALID UNDER THE SOCIAL SECURITY ACT.

Appellees' Brief represents that the state "has completely neglected to give this court the benefit of its own position in regard to the statutory violation *vel non* of the maximum grant regulation here under attack (Appellees' Brief, page 35).

The state's position with respect to the validity of the regulation under the Social Security Act is set out at pages 15 through 21 of Appellants' Brief. It may be summarized as follows:

The regulation is valid under the Social Security Act because:

1. Congressional enactments have repeatedly referred to and recognized the validity of maximum grant regulations. See Public Law, 87-543, Section 108a (1962), Public Law, 90-248, Section 213b (1967) and Public Law 90-248, Section 222c (1967).[8]

2. The provision of the Social Security Act, Section 602, (a) (9), relied upon by the district court for its decision

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42 U.S.C.A. § 603, limiting federal matching to state expenditures not exceeding $32.00 per recipient (A. 80). The inclusion of such maxima unrelated to need in the federal act itself impairs plaintiffs' contention that state maxima, individual or family, are unconstitutional in light of the purposes of the federal act.

[8]It is significant that Appellees' Brief totally fails to answer appellants' argument (Appellants' Brief, pages 3-4, 18-19) based on Public Law, 87-543, Section 108a (1962) and 42 U.S.C., Section 1396 (b) as well as the argument based upon the nature of the President's proposals in 1967 and their non-adoption by Congress save in the limited form represented by Section 602 (a) (23). *Amici*'s position that 42 U.S.C. Section 1396 (b) can be disregarded on the ground that in enacting it Congress was not directly concerned with grant maximums under AFDC as distinct from medicaid, overlooks the fact that Congress directly addressed itself to AFDC maximums in 42 U.S.C. Section 602 (a) (23), part of the same act.

that the act required per capita aid for each child in a family had no such purpose but was confined to requiring applications submitted by heads of families to be dealt with immediately and not placed on waiting lists (Appellants' Brief, page 19, note 4 and authorities cited). "All eligible individuals" as used in Section 602, (a) (9) refers to eligible applicants as distinct from family members represented by them,[9] and all members of large families share in the grants (see Brief of *Amici* Center on Social Welfare Policy, *et al*, p. 11).

3. In 1967, Congress was invited to invalidate state individual and family maximum grant regulations and fraction of need regulations and expressly declined to do so (see the Brief of *Amici* Center on Social Welfare Policy, *et al.*, at 55-56), requiring only that the family maximum regulations be adjusted in accordance with increases in the cost of living (Appellants' Brief, pages 18 and 19).[10]

4. The legislative history of the Social Security Act of 1935 and this court's decision in *King v. Smith* make clear "the states' undisputed power to set the *level of benefits and* the standard of need". (*King v. Smith*, 392 U.S. 309, 334). See Appellants' Brief, pages 8 and 9.

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[9] The lower court in its opinion suggested (A. 243-44) that Section 602 (a) (9) must be read as requiring aid to be furnished per capita lest its purpose of eliminating waiting lists be subverted by state subterfuges "such as receiving an application and considering it but postponing any benefits thereon or granting less than the benefits indicated thereon until it was financially more convenient to do so". However, Section 602 (a) (9) can be read as preventing such subterfuges discriminating between old and new applications without reading it as invalidating regulations, such as the maximum grant regulation, which apply alike to old and new applications.

[10] The position of *amici curiae* that the language about maximums in Section 602 (a) (23) was not addressed to family maximums specifically, but to individual maximums and indeed percentage reductions also is inconsistent with the language of that section ("maximums * * * on the amount of aid paid to families") and with its construction in *Rosado v. Wyman*, 419 F. 2d 170, 178-79 (2d Cir. 1969).

5. The Department of Health, Education and Welfare has approved Maryland's maximum grant regulation on at least twenty occasions (A. 183-93, 213) and these approvals necessarily constitute findings as to the conformity of the regulation with the federal act (Appellants' Brief, pages 15 and 16).

6. The Department of Health, Education and Welfare has similarly recognized the existence and validity of maximum grant regulations in some twenty-seven other states (Appellees' Brief, page 16)[11] and has indeed regularly issued monographs describing them. Regulations promulgated by the Department of Health, Education and Welfare recognize the validity of maxium grant regulations under the Social Security Act (Appellants' Brief, pages 5 and 6 and see 45 C.F.R. Section 233.20).

7. The regulation conflicts with neither the preamble of the Social Security Act (which cannot in any case be deemed controlling) nor with its basic purpose. Regulations aimed at avoidance of incentives to desertion and encouragement of employment are not inconsistent with the thrust of the federal act toward "capability for the maximum self-support" and "maintenance of continual parental care and protection" as set forth in its preamble nor with the 1967 amendments with their emphasis on work incentives and discouragement of desertion.

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[11] Contrary to the suggestion of the lower court (A. 251) the Maryland regulation is not peculiarly objectionable — indeed the maximum set out in it is one of the higher maximums (A. 124-25). Moreover, unlike the versions invalidated in Maine and Arizona the Maryland maximum is a maximum on the welfare grant, not a maximum on the welfare family's total budget. It is difficult to regard the decisions in the Maine and Arizona cases as relevant to the Maryland regulation, notwithstanding the apparent position of the *amici curiae* Center on Social Welfare Law and Policy, *et al.*, that Maryland should suffer for the sins of Maine and Arizona. (Brief of *Amici Curiae*, pp. 9-10, 35, 41), as well as those of Mississippi (p. 36).

## CONCLUSION

The thrust of appellees' position in this case is most clearly stated in the portion of their brief (pages 30-32) devoted to the dissenting opinion of Mr. Justice Field in *Munn v. Illinois*, 94 U.S. 113, 142, the language of which is used to assert a constitutional right to state appropriation of a minimum level of welfare benefits. The irony inherent in the use of Justice Field's words is, of course, self-evident.[12] The present case in itself is of limited practical importance. It is by no means unlikely that in the event of reversal the Maryland State Board of Social Services will repeal the maximum grant regulation.[13] The doctrinal significance of the case is, however, greater. It has been well stated by the director of the Center on Social Welfare Policy and Law, *amicus curiae* for appellees:

> "* * * The path of educating the judiciary to the plight and needs of the poor is an arduous and tortuous one. This can only be done in well chosen and well planned cases.
>
> * * * * * *
>
> On the more fundamental issue of the amount of the grant, the attack should be three-fold: The utilization of special grant provisions, * * * the exploration

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[12] See the chapter devoted to Justice Field in McCloskey, *American Conservatism in the Age of Enterprise.*

[13] The practical significance of the case for some states is much greater. See the *amicus curiae* brief of the State of California. Particular problems in the event of affirmance will be presented in states such as West Virginia with lower maximums and large welfare caseloads, where invalidation of family maximums will almost inevitably result either a) in sizable reductions in benefits paid to other welfare recipients (members of small families, the blind, the aged) not represented in the litigation or b) in greatly increased state appropriations and state taxes, the cost of which will fall, in no small measure, on the equally unrepresented "working poor". That the relief granted constitutes affirmative relief against a state government barred by the Eleventh Amendment despite its form as a negative injunction, is apparent. See the Brief for Appellees in *Rosado v. Wyman* (October Term 1969), at 37-38.

and use of Section 402 (a) (23) of the Social Security Act requiring adjustment in grants in accordance with the rise in cost of living; and finally the use of the equal protection clause to challenge arbitrary maxima, percentage or family, on levels of assistance. All of these may seem rather piecemeal and not designed to guarantee an adequate grant. One may ask, why not a plain old-fashioned due process attack on the adequacy of the grant? My objection is purely tactical. The time is not right and a suit would be counterproductive".[14]

It has been pertinently observed elsewhere that:

"* * * the kind of law that is made depends significantly on the kind of law-making agency that is employed. The courts are well adapted to weigh the competing claims of individual litigants; but they are poorly equipped to resolve broad issues of policy involving, for example, the reallocation of resources among large social groups or classes. Judicial law making in the latter areas is confronted by a dual peril: it may ignore considerations relevant to intelligent policy formulation, or, in taking them into account, it may inspire doubts about the integrity of the judicial process."[15]

The present litigation does not primarily involve the level of public assistance grants payable in Maryland or in the United States. Unless judges with life tenure are to assume the taxing power, no judicial decision can do much to affect that. Cf. Hazard, *Social Justice Through Civil Justice*, 36 University of Chicago Law Review 699, 710-11 (1969). Rather this case involves the restrictions to be placed upon the states, and by inference the federal government, in the future design of welfare programs, and

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[14] Albert, *Choosing the Test Case in Welfare Litigation*, National Clearinghouse for Legal Services, Clearinghouse Review, Vol. 1, No. 13 (November 1968) at 28.

[15] Francis A. Allen, Preface to Freund, *Standards of American Legislation* (2nd Edition, 1965) at xxviii-xxix.

the extent to which effects upon the labor force, family solidarity, and the growth of population may be taken into account in drafting such programs. Enough has been said to show that reasonable men can believe that the principle of less benefit can play a part in the design of public assistance programs in a society in which the private sector of the economy remains paramount. Some supporters of the new administration programs urge that welfare reform should take the path of work incentives and wage supplements to working families in order to reduce inequity between employed persons and welfare recipients. Others, including elements of organized labor, would prefer increased minimum wages and public works programs to a program of wage supplements, at least partly on the ground that the latter program results in differentials in favor of families deriving income from both work and welfare (cf. Rein, *supra*) and tends to depress wage rates. Still others believe in the principle of less benefit in its traditional form as partially embodied in maximum grant regulations. But there are few indeed among responsible commentators on this complex of problems who believe, with appellees, that public assistance can be viewed as a closed system to be assessed on the basis of its own internal logic divorced from its effect upon the labor market or its relation to the economic position of nonrecipients.[16] However, sympathetic the cases of the individual appellees may be,[17] regard for both future public policy and protection of the

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[16] There are of course some who would construct welfare policy solely on the premise that "ours is a 'subsidy enterprise' economy and the subsidies go to those who are enterprising in the use of their political influence" see Cloward and Piven, *The Poor Against Themselves,* The Nation, November 28, 1968, 258 at 260.

[17] Cf. Freund, *Standards of American Legislation* (2nd Edition) at 48: "When interests are litigated in particular cases, they not only appear as scattered and isolated interests, but their social incidence is obscured by the adventitious personal factor which colors every controversy."

political debate on basic issues essential to the functioning of democracy demands that the judgment of the court below be reversed.

Respectfully submitted,

FRANCIS B. BURCH,
Attorney General of Maryland

ROBERT F. SWEENEY,
Deputy Attorney General
of Maryland,

GEORGE W. LIEBMANN,

J. MICHAEL MCWILLIAMS,
Assistant Attorneys General
of Maryland,

For Appellants.

December 5, 1969

## PROOF OF SERVICE

I, Robert F. Sweeney, one of the attorneys for appellants herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that, on the 3rd day of December, 1969, I served a copy of the foregoing Brief for the Appellants on the Appellees herein, by hand delivery, to Joseph A. Matera, Esquire, 341 N. Calvert Street, Baltimore, Maryland 21202.

ROBERT F. SWEENEY,
Deputy Attorney General
of Maryland,
Attorney for Appellants.

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# In the Supreme Court of the United States

OCTOBER TERM, 1969

**No. 131**

EDMUND P. DANDRIDGE, JR. Chairman of The Maryland State Board of Public Welfare, et al.,
*Appellants,*

vs.

LINDA WILLIAMS, et al.,
*Appellees.*

## Motion for Leave to File Brief as Amicus Curiae on Behalf of Appellees

On Appeal From The United States District Court for the District of Maryland

### INTEREST OF THE LEGAL AID SOCIETY OF ALAMEDA COUNTY

The Legal Aid Society of Alameda County respectfully moves for an order granting leave to file a brief amicus curiae in rebuttal to that filed by the State of California in the above-entitled case pursuant to Rule 42 of the Revised Rules of this Court. Time did not permit us to secure written consent of the attorneys for the parties but we are informed they will have no objection.

The Legal Aid Society of Alameda County is a non-profit California corporation established in 1929 by members of the State Bar for the purpose of furnishing legal services to those residents of Alameda County who are unable to afford the services of a private attorney. The Legal Aid Society has a staff of attorneys with training and practical experience in the law most relevant to low-income persons, including welfare law. Attorneys on the staff of the Society represent many clients who have been denied payments under the Aid to Families with Dependent Children (AFDC) program in California by operation of the maximum grant limitations contained in California Welfare and Institutions Code Section 11450(a) and have challenged the statute in judicial proceedings now on appeal to this Court as set forth in the attached brief.

The State of California has filed a brief Amicus Curiae in this matter because of the decision herein may be dispositive of the issues presented in regard to California's statute. The Legal Aid Society wishes to reply to said brief on behalf of our clients. Our interest in this appeal and the issues we will discuss are further presented in the opening remarks of this attached brief.

For these various reasons this motion for leave to file brief as amicus curiae should be granted.

Dated: December 4, 1969.

Respectfully submitted,

THOMAS L. FIKE
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# In the Supreme Court of the United States

OCTOBER TERM, 1969

**No. 131**

EDMUND P. DANDRIDGE, JR. Chairman of The Maryland State Board of Public Welfare, et al.,

*Appellants,*

vs.

LINDA WILLIAMS, et al.,

*Appellees.*

## Brief of the Legal Aid Society of Alameda County Amicus Curiae in Support of Appellees

On Appeal From the United States District Court for the District of Maryland

### INTEREST OF THE LEGAL AID SOCIETY OF ALAMEDA COUNTY

The undersigned attorneys of the Legal Aid Society of Alameda County represent the plaintiffs and their class in case of *Kaiser v. Montgomery* ..... F. Supp ..... (Civil No. 49613, ND. Cal., opinion filed August 28, 1969) in which a specially constituted three-judge court, one judge dissenting, preliminarily enjoined enforcement of California Welfare and Institutions Code (hereinafter W&I Code) Section 11450(a) and regulations promulgated there-

under. California's W&I Code Section 11450(a) places a maximum limitation on the amount of Aid to Families with Dependent Children (hereinafter AFDC) which may be paid to a recipient family without regard to the family's composition or budgeted need. In operation this statutory payment limitation has caused forty-seven percent (47%) of all AFDC recipients (plaintiffs and their class in the litigation) to receive aid payments below the amount of their state determined needs while fifty-three percent (53%) of the AFDC recipients were paid at their need levels. The three-judge court, one judge dissenting, held the statute to be in violation of the equal protection clause of the Fourteenth Amendment of the United States Constitution because this discriminatory pattern of aid payments created arbitrary and irrational classifications among recipients.

Notice of appeal of the Kaiser Preliminary Injunction was filed with this Court on September 5, 1969 by the State of California. Thereafter a Brief of the State of California Amicus Curiae in Support of Appellants was filed in this case because of the potential consequences this decision may have on *Kaiser v. Montgomery,* supra.

While the California statutes and regulations are not identical with those of Maryland, the *Kaiser* plaintiffs agree with the State of California that the statutes and regulations are very similar. Therefore, in order to protect the interests of the *Kaiser* plaintiffs and their class, the Legal Aid Society of Alameda County seeks herein to enter as Amicus Curiae in support of the argument and position of Linda Williams, et al., Appellees, in rebuttal to the specific points raised by the Brief Amicus Curiae of the State of California.

## ARGUMENT

### A Statute May Not Discriminate Arbitrarily in an Attempt to Protect the Public Purse.

In the Brief of the State of California Amicus Curiae in Support of Appellants, it is argued that this Court should reverse the *Dandridge* lower court[1] and in time the *Kaiser* Court, supra, thereby authorizing both states to continue to apply their contested statutory schemes. Analysis reveals that the argument of the State of California is that both it and the State of Maryland should be allowed to continue using their questioned statutory schemes solely because a contrary decision would create additional fiscal burdens. California's argument raises the specter that because of an alleged taxpayers' revolt and California's desire to conserve its fiscal resources, a decision upholding the lower courts would give California reason to eliminate the AFDC program to the great detriment of even more recipients than those presently injured by the unconstitutional practice. Therefore California seems to argue, this Court should overlook the present practices which are in issue.

California's reliance on its potential fiscal harm is poorly placed. For nearly thirty years the principle has been established that the desire for conservation of public funds does not rationalize a state's otherwise unconstitutional practice. *Edwards v. California,* 314 US 160 (1941); *Collins v. State Board of Social Welfare,* 248 Iowa 369, 81 NW2d 4 (1957); *Draper v. Washington,* 372 US 487 (1963); *Rinaldi v. Yeager,* 384 US 305 (1966). That principle has since been followed by the lower court in this case, the *Kaiser* case, supra, which concerns California,

1. *Williams v. Dandridge,* 297 F Supp 450 (D. Md. 1968), here on appeal as *Dandridge v. Williams,* No 131, October Term.

and in *Dews v. Henry*, 297 F. Supp 587 (D. Ariz. 1969). These cases properly relied on the principle which was affirmed again, in *Shapiro v. Thompson*, 394 US 618 (1969), when this Court stated:

> "We recognize that a State has a valid interest in preserving the fiscal integrity of its programs. It may legitimately attempt to limit its expenditures, whether for public assistance, public education, or any other program. But a State may not accomplish such a purpose by invidious distinctions between classes of its citizens." (at 633)

Furthermore, California's contentions that its fiscal concerns should inhibit this Court are based on incorrect premises. First, California seeks to imply that elimination of the maximum grant provision would constitute denial of the power of the California legislature to set the level of welfare payments within the State thereby producing an unadjustable financial burden on its taxpayers. The contention is not well taken. The order in the *Kaiser* case only prevents the State from acting under the present statutory scheme which distributes payments in an unconstitutional manner. The State of California has compiled cost schedules which are used to compute the state-determined needs of AFDC recipients. In compiling these figures the State has ruled that AFDC needs vary according to the particular circumstances of the family, such as size, age, sex, county of residence, et cetera. Section 11450(a) discriminates against the Kaiser plaintiffs and their class because it imposes maxima which have no relationship to those cost schedules or to the criteria they establish as relevant to the amount of AFDC payments. In operation the statute causes the Kaiser plaintiffs to receive less than their state-determined needs while other families who happen to fit the schedules are paid their full needs. The Lower

Court order carefully leaves California free to devise a different scheme within whatever budget it wishes for so long as all families are treated comparably. The order does not interfere with the legislative power to set the level of expenditures for AFDC but only its power to arbitrarily discriminate among families within that limit.

Secondly, the State contends that "judicial interference" in this matter would only confuse the legislature and therefor that this Court should abstain from deciding this issue and leave the entire controversy to legislative consideration. On the contrary, the State should realize that the judicial system is bound to issue decisions "implementing the constitutional safeguards that protect individual rights"[2] and that these "constitutional rights are to be promptly vindicated."[3] The Courts are compelled to provide judicial guidance on the constitutional limits for the State of California and all other states just as they are compelled to guarantee protection of those constitutional rights for plaintiffs in all of these cases.

Thirdly, the State concludes that affirmance by this Court of the decision below would exacerbate the inequities in public assistance. This position simply has not been shown to be true by the State's argument. The State of California has argued, however, that such affirmance would cause its own legislature to establish more harsh public assistance schemes or to eliminate such programs altogether in the future and that these acts of its legislature would exacerbate inequities. Those inequities, however, would also be subject to constitutional scrutiny should they materialize. In any event, this Court should not be induced to tolerate one unconstitutional practice simply

2. *Trop v. Dulles*, 356 US 86, 103, 104 (1958).
3. *Watson v. City of Memphis*, 373 US 526, 539 (1963).

because a proponent threatens even more questionable actions in the future.

And fourthly, California asserts that an affirmance in this case would add to California's fiscal crisis because so many of its practices have been rejected in other welfare cases and the cumulative cost of complying with constitutional mandates in every instance would be great. This Court, however, should be somewhat skeptical of the position as set forth. The State of California has not in fact begun to comply with even one of the orders it lists as creating an alleged crisis. (Cf. Affidavit of Cherie A. Gaines, Peter E. Sitkin, and Robert L. Gnaizda, Attorneys for the plaintiffs and their classes in the cited cases, attached hereto in the Appendix.) The concerns expressed by the State of California therefore are not real. Even if they were real, they would be irrelevant to the determination of the constitutional questions facing this Court because these concerns are fiscal and therefore subject to *Shapiro v. Thompson* and the other precedents discussed above.

## CONCLUSION

For the foregoing reasons we adopt and join in the argument of Linda Williams for the affirmance of the lower Court and urge the rejection of the contentions raised by the State of California in its Brief Amicus Curiae.

Respectfully submitted,

THOMAS L. FIKE
*Executive Director of the Legal Aid Society of Alameda County*

CHERIE A. GAINES,
*Chief Attorney*

## *Appendix A*

*In the Supreme Court of the United States*

October Term, 1969

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**No. 131**

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EDMUND P. DANDRIDGE, JR. Chairman of The Maryland State Board of Public Welfare, et al.,

*Appellants,*

vs.

LINDA WILLIAMS, et al.,

*Appellees.*

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STATE OF CALIFORNIA
CITY AND COUNTY OF ALAMEDA } ss:

CHERIE A. GAINES of Legal Aid Society of Alameda County, PETER E. SITKIN of San Francisco Neighborhood Level Assistance Foundation, and ROBERT L. GNAIZDA of California Rural Legal Assistance, being duly sworn, severally depose and say:

1. That deponent CHERIE A. GAINES is the attorney responsible for conducting the case of *Kaiser v. Montgomery,* No. 49613 Civil, United States District Court for the Northern District of California, for plaintiffs and their class;

2. That deponent PETER E. SITKIN is the attorney responsible for conducting the case of *Ivy v. Montgomery,* Superior Court State of California, City and County of San Francisco No. 592705, for plaintiffs and their class;

3. That deponent ROBERT L. GNAIZDA is the attorney responsible for conducting the case of *Macias v. Finch*, U.S.D.C. Northern District of California, No. 50956, for plaintiffs and their class; and

4. A preliminary injunction had been entered and stayed in the *Kaiser* case; final judgment had been entered and appealed in the *Ivy* case and no payments have been made in compliance with the order; and only a TRO which was subsequently vacated had ever been entered in the *Macias* case. Thus, on the date of our respective signatures, the State of California was not paying any money to any of our respective clients or other members of their classes. We were further informed that the State of California does not plan to increase welfare expenditures over present levels in the immediate future to effect compliance with the judgments and orders in the *Kaiser* and *Ivy* cases.

Dated: November 28, 1969.

CHERIE A. GAINES
Cherie A. Gaines

PETER E. SITKIN
Peter E. Sitkin

ROBERT L. GNAIZDA
Robert L. Gnaizda

Subscribed and sworn to before me
this 28th day of November, 1969.

WYLENE DARDEN
*Notary Public*

My commission expires July 27, 1973.

No. 131

Petition for rehearing
filed on May 1, 1970.
(Not printed)

NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D.C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

# SUPREME COURT OF THE UNITED STATES

No. 131.—October Term, 1969

Edmund P. Dandridge, Jr., et al., Appellants, *v.* Linda Williams et al. | On Appeal From the United States District Court for the District of Maryland.

[April 6, 1970]

Mr. Justice Stewart delivered the opinion of the Court.

This case involves the validity of a method used by Maryland, in the administration of an aspect of its public welfare program, to reconcile the demands of its needy citizens with the finite resources available to meet those demands. Like every other State in the Union, Maryland participates in the federal Aid to Families with Dependent Children (AFDC) program, 42 U. S. C. § 601 *et seq.*, which originated with the Social Security Act of 1935.[1] Under this jointly financed program, a State computes the so-called "standard of need" of each eligible family unit within its borders. See generally, *Rosado* v. *Wyman*, *ante*. Some States provide that every family shall receive grants sufficient to meet fully the determined standard of need. Other States provide that each family unit shall receive a percentage of the determined need. Still others provide grants to most families in full accord with the ascertained standard of need, but impose an upper limit on the total amount of money any one family unit may receive. Maryland, through administrative adoption of a "maximum grant regulation," has followed this last

[1] 49 Stat. 620, as amended, 42 U. S. C. §§ 301–1394.

course. This suit was brought by several AFDC recipients to enjoin the application of the Maryland maximum grant regulation on the ground that it is in conflict with the Social Security Act of 1935 and with the Equal Protection Clause of the Fourteenth Amendment. A three-judge District Court, convened pursuant to 28 U. S. C. § 2281, held that the Maryland regulation violates the Equal Protection Clause. 297 F. Supp. 450. This direct appeal followed, 28 U. S. C. § 1253, and we noted probable jurisdiction, 396 U. S. 811.

The operation of the Maryland welfare system is not complex. By statute[2] the State participates in the AFDC program. It computes the standard of need for each eligible family based on the number of children in the family and the circumstances under which the family lives. In general, the standard of need increases with each additional person in the household, but the increments become proportionately smaller.[3] The regulation here in issue imposes upon the grant that any single family may receive an upper limit of $250 per month in certain counties including Baltimore City, and of $240 per month elsewhere in the State.[4] The appellees all

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[2] Maryland Ann. Code, Art. 88A, § 44A *et seq.* (1969).

[3] The schedule for determining subsistence needs is set forth in an Appendix to this opinion.

[4] The regulation now provides:

"B. *Amount*—The amount of the grant is the resulting amount of need when resources are deducted from requirements as set forth in this Rule, subject to a maximum on each grant from each category:

"1. $250—for local departments under any 'Plan A' of Shelter Schedule

"2. $240—for local departments under any 'Plan B' of Shelter Schedule

"*Except that:*

"a. If the requirements of a child over 18 are included to enable him to complete high school or training for employment (III–C–3),

have large families, so that their standards of need as computed by the State substantially exceed the maximum grants that they actually receive under the regulation. The appellees urged in the District Court that the maximum grant limitation operates to discriminate against them merely because of the size of their families, in violation of the Equal Protection Clause of the Fourteenth Amendment. They claimed further that the regulation is incompatible with the purpose of the Social Security Act of 1935, as well as in conflict with its explicit provisions.

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the grant may exceed the maximum by the amount of such child's needs.

"b. If the resource of support is paid as a refund (VI–B–6), the grant may exceed the maximum by an amount of such refund. This makes consistent the principle that the amount from public assistance funds does not exceed the maximum.

"c. The maximum may be exceeded by the amount of an emergency grant for items not included in a regular monthly grant. (VIII)

"d. The maximum may be exceeded up to the amount of a grant to a person in one of the nursing homes specified in Schedule D, Section a.

"3. A grant is subject to any limitation established because of insufficient funds."

Maryland Manual of Dept. of Social Services, Rule 200, § X, B, at 23, formerly Md. Manual of Dept. of Pub. Wel., Part II, Rule 200, § VII, 1, at 20.

In addition, AFDC recipients in Maryland may be eligible for certain assistance in kind, including food stamps, public housing, and medical aid. See, *e. g.*, 42 U. S. C. § 1396 *et seq.* (1964 ed., Supp. IV); 7 U. S. C. §§ 1695–1697. The applicable provisions of state and federal law also permit recipients to keep part of their earnings from outside jobs. 42 U. S. C. §§ 630–644 (1964 ed., Supp. IV); Md. Manual of Dept. of Social Services, Part II, Rule 200, § VI, B (8)(c)(2). Both federal and state law require that recipients seek work and take it if it is available. 42 U. S. C. § 602 (a)(19)(F) (1964 ed., Supp. IV); Md. Manual of Dept. of Social Services, Rule 200, § III (D)(1)(d).

In its original opinion the District Court held that the Maryland regulation does conflict with the federal statute, and also concluded that it violates the Fourteenth Amendment's equal protection guarantee. After reconsideration on motion, the court issued a new opinion resting its determination of the regulation's invalidity entirely on the constitutional ground.[5] Both the statutory and constitutional issues have been fully briefed and argued here, and the judgment of the District Court must, of course, be affirmed if the Maryland regulation is in conflict with either the federal statute or the Constitution.[6] We consider the statutory question first, because if the appellees' position on this question is correct, there is no occasion to reach the constitutional issues.

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[5] Both opinions appear at 297 F. Supp. 450.

[6] The prevailing party may, of course, assert in a reviewing court any ground in support of his judgment, whether or not that ground was relied upon or even considered by the trial court. Compare *Langnes* v. *Green*, 282 U. S. 531, 538, with *Story Parchment Co.* v. *Paterson Parchment Paper Co.*, 282 U. S. 555, 567–568. As the Court said in *United States* v. *American Ry. Exp. Co.*, 265 U. S. 425, 435–436: "[I]t is likewise settled that the appellee may, without taking a cross-appeal, urge in support of a decree any matter appearing in the record, although his argument may involve an attack upon the reasoning of the lower court or an insistence upon matter overlooked or ignored by it. By the claims now in question, the American does not attack, in any respect, the decree entered below. It merely asserts additional grounds why the decree should be affirmed." When attention has been focused on other issues, or when the court from which a case comes has expressed no views on a controlling question, it may be appropriate to remand the case rather than deal with the merits of that question in this Court. See *Aetna Cas. & Sur. Co.* v. *Flowers*, 330 U. S. 464, 468; *United States* v. *Ballard*, 322 U. S. 78, 88. That is not the situation here, however. The issue having been fully argued both here and in the District Court, consideration of the statutory claim is appropriate. *Bondholders Committee* v. *Commissioner*, 315 U. S. 189, 192, n. 2; H. Hart & H. Wechsler, The Federal Courts and the Federal System 1394 (1953). See also *Jaffke* v. *Dunham*, 352 U. S. 280.

*Ashwander* v. *TVA*, 297 U. S. 288, 346–347 (Brandeis, J., concurring); *Rosenberg* v. *Fleuti*, 374 U. S. 449.

I

The appellees contend that the maximum grant system is contrary to § 402 (a)(10) of the Social Security Act, as amended,[7] which requires that a state plan shall

> "provide . . . that all individuals wishing to make application for aid to families with dependent children shall have the opportunity to do so, and that aid to families with dependent children shall be furnished with reasonable promptness to all eligible individuals."

The argument is that the state regulation denies benefits to the younger children in a large family. Thus, the appellees say, the regulation is in patent violation of the Act, since those younger children are just as "dependent" as their older siblings under the definition of "dependent child" fixed by federal law.[8] See *King* v. *Smith*, 392

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[7] 64 Stat. 550 (1950), as amended 76 Stat. 185 (1962), 81 Stat. 881 (1968), 42 U. S. C. A. § 602 (a)(10).

[8] 42 U. S. C. § 606 (a) (1964 ed., Supp. IV) provides:

"The term 'dependent child' means a needy child (1) who has been deprived of parental support or care by reason of the death, continued absence from home, or physical or mental incapacity of a parent, and who is living with his father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt, first cousin, nephew, or niece, in a place of residence maintained by one or more of such relatives as his or their own home and (2) who is (A) under the age of eighteen, or (B) under the age of twenty-one and (as determined by the State in accordance with standards prescribed by the Secretary) a student regularly attending a school, college, or university, or regularly attending a course of vocational or technical training designed to fit him for gainful employment."

The Act also covers children who have been placed in foster homes pursuant to judicial order or because they are State charges. 42 U. S. C. § 608.

U. S. 309. Moreover, it is argued that the regulation, in limiting the amount of money any single household may receive, contravenes a basic purpose of the federal law by encouraging the parents of large families to "farm out" their children to relatives whose grants are not yet subject to the maximum limitation.

It cannot be gainsaid that the effect of the Maryland maximum grant provision is to reduce the per capita benefits to the children in the largest families. Although the appellees argue that the younger and more recently arrived children in such families are totally deprived of aid, a more realistic view is that the lot of the entire family is diminished because of the presence of additional children without any increase in payments. Cf. *King* v. *Smith*, *supra*, at 335 n. 4. It is no more accurate to say that the last child's grant is wholly taken away than to say that the grant of the first child is totally rescinded. In fact, it is the *family* grant that is affected. Whether this per capita diminuation is compatible with the statute is the question here. For the reasons that follow, we have concluded that the Maryland regulation is permissible under the federal law.

In *King* v. *Smith*, *supra*, we stressed the States' "undisputed power," under these provisions of the Social Security Act, "to set the level of benefits and the standard of need." *Id.*, at 334. We described the AFDC enterprise as "a scheme of cooperative federalism," *id.*, at 316, and noted carefully that "[t]here is no question that States have considerable latitude in allocating their AFDC resources, since each State is free to set its own standard of need and to determine the level of benefits by the amount of funds it devotes to the program." *Id.*, at 318–319.

Congress was itself cognizant of the limitations on state resources from the very outset of the federal welfare

program. The first section of the Act, 42 U. S. C. § 601, provides that the Act is

> "For the purpose of encouraging the care of dependent children in their own homes or in the homes of relatives by enabling each State to furnish financial assistance and rehabilitation and other services, *as far as practicable under the conditions in such State*, to needy dependent children and the parents or relatives with whom they are living to help maintain and strengthen family life and to help such parents or relatives to attain or retain capability for the maximum self-support and personal independence consistent with the maintenance of continuing parental care and protection . . . ." (Emphasis added.)

Thus the starting point of the statutory analysis must be a recognition that the federal law gives each State great latitude in dispensing its available funds.

The very title of the Act, the repeated references to families added in 1962, Pub. L. No. 87-543, § 104 (a)(3), 76 Stat. 185, and the words of the preamble quoted above, show that Congress wished to help children through the family structure. The operation of the statute itself has this effect. From its inception the Act has defined "dependent child" in part by reference to the relatives with whom the child lives.[9] When a "dependent child" is living with relatives, then "aid" also includes payments and medical care to those relatives, including the spouse of the child's parent. 42 U. S. C. § 606 (b). Thus, as the District Court noted, the amount of aid "is . . . computed by treating the relative, parent or spouse of parent,

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[9] 42 U. S. C. § 606 (a), *supra*, n. 8, formerly c. 531, § 406, 49 Stat. 629 (1935), as amended, c. 836, § 321, 70 Stat. 850 (1956). See also S. Rep. No. 628, 74th Cong., 1st Sess., 16-17 (1935).

as the case may be, of the 'dependent child' as a part of the family unit." 297 F. Supp., at 455. Congress has been so desirous of keeping dependent children within a family that it amended the law in 1967 to provide that aid could go to children whose need arose merely from their parents' unemployment, under federally determined standards, although the parent was not incapacitated. 42 U. S. C. § 607 (1964 ed., Supp. IV).

The States must respond to this federal statutory concern for preserving children in a family environment. Given Maryland's finite resources, its choice is either to support some families adequately and others less adequately, or not to give sufficient support to any family. We see nothing in the federal statute that forbids a State to balance the stresses which uniform insufficiency of payments would impose on all families against the greater ability of large families—because of the inherent economies of scale—to accommodate their needs to diminished per capita payments. The strong policy of the statute in favor of preserving family units does not prevent a State from sustaining as many families as it can, and providing the largest families somewhat less than their ascertained per capita standard of need.[10] Nor does the maximum grant system necessitate the dissolution of family bonds. For even if a parent should be inclined to increase his per capita family income by

[10] The Maryland Dept. of Social Services, Monthly Financial and Statistical Report, Table 7 (Nov. 1969), indicates that 32,504 families receive AFDC assistance. In the Maryland Dept. of Social Services, 1970 Fiscal Year Budget, the department estimated that 2,537 families would be affected by the removal of the maximum grant limitation. It thus appears that only one thirteenth of the AFDC families in Maryland receive less than their determined need because of the operation of the maximum grant regulation. Of course, if the same funds were allocated subject to a percentage limitation, no AFDC family would receive funds sufficient to meet its determined need.

sending a child away, the federal law requires that the child, to be eligible for AFDC payments, must live with one of several enumerated relatives.[11] The kinship tie may be attenuated but it cannot be destroyed.

The appellees rely most heavily upon the statutory requirement that aid "shall be furnished with reasonable promptness to all eligible individuals." 42 U. S. C. § 602 (a)(10) (1964 ed., Supp. IV). But since the statute leaves the level of benefits within the judgment of the State, this language cannot mean that the "aid" furnished must equal the total of each individual's standard of need in every family group. Indeed the appellees do not deny that a scheme of proportional reductions for all families could be used which would result in no individual's receiving aid equal to his standard of need. As we have noted, the practical effect of the Maryland regulation is that all children, even in very large families, do receive some aid. We find nothing in 42 U. S. C. § 602 (a)(10) that requires more than this.[12] So long as some aid is provided to all eligible families and all eligible children, the statute itself is not violated.

This is the view that has been taken by the Secretary of Health, Education, and Welfare, who is charged with the administration of the Social Security Act and the

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[11] 42 U. S. C. § 606 (a), n. 8, *supra*.

[12] The State argues that in the total context of the federal statute, reference to "eligible individuals" means eligible applicants for AFDC grants, rather than all the family members whom the applicants may represent, and that the statutory provision was designed only to prevent the use of waiting lists. There is considerable support in the legislative history for this view. See H. R. Rep. No. 1300, 81st Cong., 1st Sess., 48, 148 (1949); 95 Cong. Rec. 13934 (1949) (remarks of Rep. Forand). And it is certainly true that the statute contemplates that actual payments will be made to responsible adults. See, *e. g.*, 42 U. S. C. § 605. For the reasons given above, however, we do not find it necessary to consider this argument.

approval of state welfare plans. The parties have stipulated that the Secretary has, on numerous occasions, approved the Maryland welfare scheme, including its provision of maximum payments to any one family, a provision which has been in force in various forms since 1947. Moreover, a majority of the States pay less than their determined standard of need, and 20 of these States impose maximums on family grants of the kind here in issue.[13] The Secretary has not disapproved any state plan because of its maximum grant provision. On the contrary, the Secretary has explicitly recognized state maximum grant systems.[14]

Finally, Congress itself has acknowledged a full awareness of state maximum grant limitations. In 1967 Congress amended 42 U. S. C. § 602 (a) to add a subsection, 23:

> "[The State shall] provide that by July 1, 1969, the amounts used by the State to determine the needs

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[13] See Department of Health, Education, and Welfare, Report on Money Payments to Recipients of Special Types of Public Assistance, Table 4 (NCSS Report D–4 1967). See also Hearings on H. R. 5710 before the House Committee on Ways and Means, 90th Cong., 1st Sess., pt. 1, at 118 (1967).

[14] Department of Health, Education, and Welfare, State Maximums and Other Methods of Limiting Money Payments to Recipients of Special Types of Public Assistance 3 (1962):

"When States are unable to meet need as determined under their standards they reduce payments on a percentage or flat reduction basis . . . . These types of limitations may be used in the absence of, or in conjunction with, legal or administrative maximums. A maximum limits the amount of assistance that may be paid to persons whose determined need exceeds that maximum, whereas percentage or flat reductions usually have the effect of lowering payments to most or all recipients to a level below that of determined need."

See also Department of Health, Education, and Welfare, Interim Policy Statement of May 31, 1968, 33 Fed. Reg. 10230 (1968); 45 CFR § 233.20 (a)(2)(ii), 34 Fed. Reg. 1394 (1969).

> of individuals will have been adjusted to reflect fully changes in living costs since such amounts were established, and *any maximums that the State imposes on the amount of aid paid to families will have been proportionately adjusted.*" (Emphasis added.)

This specific congressional recognition of the state maximum grant provisions is not, of course, an approval of any specific maximum. The structure of specific maximums Congress left to the States, and the validity of any such structure must meet constitutional tests. However, the 1967 amendment does make clear that Congress fully recognized that the Act permits maximum grant regulations.[15]

For all of these reasons, we conclude that the Maryland regulation is not prohibited by the Social Security Act.

## II

Although a State may adopt a maximum grant system in allocating its funds available for AFDC payments

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[15] The provisions of 42 U. S. C. § 1396b (f), also added in 1967, 81 Stat. 898, are consistent with this view. That section provides that no medical assistance shall be given to any family which has a certain level of income. The section, however, makes an exception, 42 U. S. C. § 1396b (f) (1) (B) (ii):

"If the Secretary finds that the operation of a uniform maximum limits payments to families of more than one size, he may adjust the amount otherwise determined under clause (i) to take account of families of different sizes."

These provisions have particular significance in light of the Administration's initial effort to secure a law forcing each State to pay its full standard of need. See *Rosado* v. *Wyman*, *supra*.

This recognition of the existence of state maximums is not new with the 1967 amendments. In reporting on amendments to the Social Security Act in 1962, 76 Stat. 185 (1962), the Senate committee referred to "States in which there is a maximum limiting the amount of assistance an individual may receive." S. Rep. No. 1589, 87th Cong., 2d Sess., 14 (1962).

without violating the Act, it may not, of course, impose a regime of invidious discrimination in violation of the Equal Protection Clause of the Fourteenth Amendment. Maryland says that its maximum grant regulation is wholly free of any invidiously discriminatory purpose or effect, and that the regulation is rationally supportable on at least four entirely valid grounds. The regulation can be clearly justified, Maryland argues, in terms of legitimate state interests in encouraging gainful employment, in maintaining an equitable balance in economic status as between welfare families and those supported by a wage-earner, in providing incentives for family planning, and in allocating available public funds in such a way as fully to meet the needs of the largest possible number of families. The District Court, while apparently recognizing the validity of at least some of these state concerns, nonetheless held that the regulation "is invalid on its face for overreaching," 297 F. Supp., at 468—that it violates the Equal Protection Clause "[b]ecause it cuts too broad a swath on an indiscriminate basis as applied to the entire group of AFDC eligibles to which it purports to apply . . . ." 297 F. Supp., at 469.

If this were a case involving government action claimed to violate the First Amendment guarantee of free speech, a finding of "overreaching" would be significant and might be crucial. For when otherwise valid governmental regulation sweeps so broadly as to impinge upon activity protected by the First Amendment, its very overbreadth may make it unconstitutional. See, *e. g.*, *Shelton* v. *Tucker*, 364 U. S. 479. But the concept of "overreaching" has no place in this case. For here we deal with state regulation in the social and economic field, not affecting freedoms guaranteed by the Bill of Rights, and claimed to violate the Fourteenth Amendment only because the regulation results in some disparity in grants

of welfare payments to the largest AFDC families.[16] For this Court to approve the invalidation of state economic or social regulation as "overreaching" would be far too reminiscent of an era when the Court thought the Fourteenth Amendment gave it power to strike down state laws "because they may be unwise, improvident, or out of harmony with a particular school of thought." *Williamson* v. *Lee Optical Co.*, 348 U. S. 483, 488. That era long ago passed into history. *Ferguson* v. *Skrupa*, 372 U. S. 726.

In the area of economics and social welfare, a State does not violate the Equal Protection Clause merely because the classifications made by its laws are imperfect. If the classification has some "reasonable basis," it does not offend the Constitution simply because the classification "is not made with mathematical nicety or because in practice it results in some inequality." *Lindsley* v. *Natural Carbonic Gas Co.*, 220 U. S. 61, 78. "The problems of government are practical ones and may justify, if they do not require, rough accommodations—illogical, it may be, and unscientific." *Metropolis Theatre Co.* v. *City of Chicago*, 228 U. S. 61, 69–70. "A statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it." *McGowan* v. *Maryland*, 366 U. S. 420, 426.

To be sure, the cases cited, and many others enunciating this fundamental standard under the Equal Protection Clause, have in the main involved state regulation of business or industry. The administration of public welfare assistance, by contrast, involves the most basic economic needs of impoverished human beings. We recognize the dramatically real factual difference between the cited cases and this one, but we can find no basis for

[16] Cf. *Shapiro* v. *Thompson*, 394 U. S. 618, where, by contrast, the Court found state interference with the constitutionally protected freedom of interstate travel.

applying a different constitutional standard.[17] See *Snell* v. *Wyman*, 281 F. Supp. 853, aff'd, —— U. S. ——. It is a standard that has consistently been applied to state legislation restricting the availability of employment opportunities. *Goesaert* v. *Cleary*, 335 U. S. 464; *Kotch* v. *Board of River Port Pilot Comm'rs*, 330 U. S. 552. See also *Flemming* v. *Nestor*, 363 U. S. 603. And it is a standard that is true to the principle that the Fourteenth Amendment gives the federal courts no power to impose upon the States their views of wise economic or social policy.[18]

Under this long-established meaning of the Equal Protection Clause, it is clear that the Maryland maximum grant regulation is constitutionally valid. We need not explore all the reasons that the State advances in justification of the regulation. It is enough that a solid foundation for the regulation can be found in the State's legitimate interest in encouraging employment and in avoiding discrimination between welfare families and the families of the working poor. By combining a limit on the recipient's grant with permission to retain money earned, without reduction in the amount of the grant, Maryland provides an incentive to seek gainful employment. And by keying the maximum family AFDC grants to the minimum wage a steadily employed head of a household receives, the State maintains some semblance of an equitable balance between families on welfare and those supported by an employed breadwinner.[19]

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[17] It is important to note that there is no contention that the Maryland regulation is infected with a racially discriminatory purpose or effect such as to make it inherently suspect. Cf. *McLaughlin* v. *Florida*, 379 U. S. 184.

[18] See Developments in the Law—Equal Protection, 82 Harv. L. Rev. 1065, 1082–1087.

[19] The present federal minimum wage is $52–$64 per 40-hour week, 29 U. S. C. § 206 (1964 ed., Supp. IV). The Maryland minimum wage is $46–$52 per week, Md. Code Ann., Art. 100, § 83.

It is true that in some AFDC families there may be no person who is employable.[20] It is also true that with respect to AFDC families whose determined standard of need is below the regulatory maximum, and who therefore receive grants equal to the determined standard, the employment incentive is absent. But the Equal Protection Clause does not require that a State must choose between attacking every aspect of a problem or not attacking the problem at all. *Lindsley* v. *Natural Carbonic Gas Co.*, 220 U. S. 61. It is enough that the State's action be rationally based and free from invidious discrimination. The regulation before us meets that test.

We do not decide today that the Maryland regulation is wise, that it best fulfills the relevant social and economic objectives that Maryland might ideally espouse, or that a more just and humane system could not be devised. Conflicting claims of morality and intelligence are raised by opponents and proponents of almost every measure, certainly including the one before us. But the intractable economic, social, and even philosophical problems presented by public welfare assistance programs are not the business of this Court. The Constitution may impose certain procedural safeguards upon systems of welfare administration, *Goldberg* v. *Kelly, ante.* But the Constitution does not empower this Court to second-guess state officials charged with the difficult responsibility of allocating limited public welfare funds among the myriad of potential recipients. Cf. *Steward Mach. Co.* v. *Davis*, 301 U. S. 548, 584–585; *Helvering* v. *Davis*, 301 U. S. 619, 644.

*The judgment is reversed.*

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[20] It appears that no family members of any of the named plaintiffs in the present case are employable.

# APPENDIX

The following was the schedule for determining subsistence needs, exclusive of rent, at the time this action was brought. Maryland Manual of Dept. of Pub. Welfare, Part II, Rule 200, Sched. A, 27:

STANDARD FOR DETERMINING COST OF SUBSISTENCE NEEDS

| Number of persons in assistance unit (include unborn child as an additional person) | I | II | III | IV | V |
|---|---|---|---|---|---|
| | Monthly costs when | | | | |
| | No heat or utilities included with shelter | Light and/or cooking fuel included with shelter | Heat with or without light included with shelter | Heat, cooking fuel and water heating included with shelter | Heat and all utilities included with shelter |
| 1 person living: | | | | | |
| Alone | $51.00 | $49.00 | $43.00 | $40.00 | $38.00 |
| With 1 person | 42.00 | 41.00 | 38.00 | 36.00 | 35.00 |
| With 2 persons | 38.00 | 37.00 | 35.00 | 34.00 | 33.00 |
| With 3 or more persons | 36.00 | 35.00 | 34.00 | 33.00 | 32.00 |
| 2 persons living: | | | | | |
| Alone | 84.00 | 82.00 | 76.00 | 72.00 | 70.00 |
| With 1 other person | 76.00 | 74.00 | 70.00 | 68.00 | 66.00 |
| With 2 or more other persons | 72.00 | 70.00 | 68.00 | 66.00 | 64.00 |
| 3 persons living: | | | | | |
| Alone | 113.00 | 110.00 | 105.00 | 101.00 | 99.00 |
| With 1 or more other persons | 108.00 | 105.00 | 101.00 | 98.00 | 97.00 |
| 4 persons | 143.00 | 140.00 | 135.00 | 131.00 | 128.00 |
| 5 persons | 164.00 | 162.00 | 156.00 | 153.00 | 150.00 |
| 6 persons | 184.00 | 181.00 | 176.00 | 172.00 | 169.00 |
| 7 persons | 209.00 | 205.00 | 201.00 | 197.00 | 193.00 |
| 8 persons | 235.00 | 231.00 | 227.00 | 222.00 | 219.00 |
| 9 persons | 259.00 | 256.00 | 251.00 | 247.00 | 244.00 |
| 10 persons | 284.00 | 281.00 | 276.00 | 271.00 | 268.00 |
| Each additional person over 10 persons | 24.50 | 24.50 | 24.50 | 24.50 | 24.50 |

Modification of standard for cost of eating in restaurant: Add $15 per individual.

Other schedules set the estimated cost of shelter in the various counties in Maryland. See *id.*, Sched. B—Plan A, 29; Sched. B—Plan B, 30. The present schedules, which are substantially the same, appear in the Maryland Manual of Dept. of Social Services, Part II, Rule 200, at 33, 35.

# SUPREME COURT OF THE UNITED STATES

No. 131.—October Term, 1969

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|---|---|
| Edmund P. Dandridge, Jr., et al., Appellants, *v.* Linda Williams et al. | On Appeal From the United States District Court for the District of Maryland. |

[April 6, 1970]

Mr. Justice Black, with whom The Chief Justice joins, concurring.

Assuming, as the Court apparently does, that individual welfare recipients can bring an action against state welfare authorities challenging an aspect of the State's welfare plan as inconsistent with the provisions of the Social Security Act, 42 U. S. C. §§ 601–610, even though the Secretary of Health, Education, and Welfare has determined as he has here that the federal and state provisions are consistent, cf. *Rosado* v. *Wyman*, — U. S. — (1970) (Black, J., dissenting), I join in the opinion of the Court in this case.

# SUPREME COURT OF THE UNITED STATES

No. 131.—October Term, 1969

| | |
|---|---|
| Edmund P. Dandridge, Jr., et al., Appellants, *v.* Linda Williams et al. | On Appeal From the United States District Court for the District of Maryland. |

[April 6, 1970]

Mr. Justice Harlan, concurring.

I join the Court's opinion, with one reservation which I deem called for by certain implications that might be drawn from the opinion.

As I stated in dissent in *Shapiro* v. *Thompson*, 394 U. S. 618, 658–663 (1969), I find no solid basis for the doctrine there expounded that certain statutory classifications will be held to deny equal protection unless justified by a "compelling" governmental interest, while others will pass muster if they meet traditional equal protection standards. See also my dissenting opinion in *Katzenbach* v. *Morgan*, 384 U. S. 641, 660–661 (1966). Except with respect to racial classifications, to which unique historical considerations apply, see *Shapiro*, at 659, I believe the constitutional provisions assuring equal protection of the laws impose a standard of rationality of classification, long applied in the decisions of this Court, that does not depend upon the nature of the classification or interest involved.

It is on this basis, and not because this case involves only interests in "the area of economics and social welfare," *ante*, at 14, that I join the Court's constitutional holding.

# SUPREME COURT OF THE UNITED STATES

No. 131.—October Term, 1969

Edmund P. Dandridge, Jr., et al., Appellants, v. Linda Williams et al. | On Appeal From the United States District Court for the District of Maryland.

[April 6, 1970]

Mr. Justice Douglas, dissenting.

Appellees, recipients of benefits under the Aid to Families with Dependent Children program (AFDC), brought this suit under 42 U. S. C. § 1983 to declare invalid and permanently enjoin the enforcement of the Maryland maximum grant regulation, which places a ceiling on the amount of benefits payable to a family under AFDC. They alleged that the regulation was inconsistent with the Social Security Act and that it denied equal protection of the laws in violation of the Fourteenth Amendment. I do not find it necessary to reach the constitutional argument in this case, for in my view the Maryland regulation is inconsistent with the terms and purposes of the Social Security Act.

The Maryland regulation under attack, Rule 200, § X, B, of the Maryland Department of Social Services, places an absolute limit of $250 per month on the amount of a grant under AFDC, regardless of the size of the family and its actual need.[1] The effect of this regulation is to deny benefits to additional children born into a family of six, thus making it impossible for families of seven persons or more to receive an amount commensurate with

[1] In certain counties the applicable maximum grant is $240 per month. All of the appellees in this case are residents of Baltimore City, where the $250 month maximum grant applies.

their actual need in accordance with standards formulated by the Maryland Department of Social Services, whereas families of six or less can receive the full amount of their need as so determined. Appellee Williams, according to the computed need for herself and her eight children, should receive $296.15 per month. Appellees Gary should receive $331.50 for themselves and their eight children. Instead, these appellees received the $250 maximum grant.

In *King* v. *Smith*, 392 U. S. 309, 318–319, this Court stated: "There is no question that States have considerable latitude in allocating their AFDC resources, since each State is free to set its own standard of need and to determine the level of benefits by the amount of funds it devotes to the program." That dictum, made in the context of a case which dealt with Alabama's "substitute father" regulation, does little to clarify the limits of state authority. The holding in *King* was that the Alabama regulation, which denied AFDC benefits to the children of a mother who "cohabited" in or outside her home with an able bodied man, was invalid because it defined "parent" in a manner inconsistent with § 406 (a) of the Social Security Act, 42 U. S. C. § 606 (a) (1964 ed., Supp. IV). The Court rejected the State's contention that its regulation was "a legitimate way of allocating its resources available for AFDC assistance." 392 U. S., at 318. Thus, whatever else may be said of the "latitude" extended to States in determining the benefits payable under AFDC, the holding in *King* makes clear that it does not include restrictions on the payment of benefits which are incompatible with the Social Security Act.

The methods by which a State can limit AFDC payments below the level of need are numerous. The method used in *King* was to deny totally benefits to a specifically defined class of otherwise eligible recipients.

Another method, which was disapproved by Congress in § 402 (a)(10) of the Social Security Act, 42 U. S. C. § 602 (a)(10) (1964 ed., Supp. IV), was to refuse to take additional applications pending a decrease in the number of recipients on the assistance rolls or an increase in available funds. The two methods most commonly employed by the States at present, however, are percentage reductions and grant maximums. See National Center for Social Statistics, Social and Rehabilitation Service, U. S. Dept. of Health, Education, and Welfare, Report D–3, Tables 2, 3 (October 1968). Grant maximums, in which payments are made according to need but subject to a stated dollar maximum, are of two types: individual maximums and family maximums. Only the latter type is at issue in the present case. Percentage reductions involve payments of a fixed percentage of actual need as determined by the State's need standard.

The authority given the States to set the level of benefits payable under their AFDC plans stems from § 401 of the Social Security Act, 42 U. S. C. § 601 (1964 ed., Supp. IV), which states the purpose of the federal AFDC appropriations as "enabling each State to furnish financial assistance and rehabilitation and other services, *as far as practicable under the conditions in such State* . . . ." (Emphasis added.) It is significant in this respect that the Court in *King* referred only to a State's determination of the level of benefits *"by the amount of funds it devotes to the* [AFDC] *program."* 392 U. S., at 318–319 (emphasis added). The language of § 401 and the language of the Court in *King* both reflect a concern that the Federal Government not require a state legislature to appropriate more money for welfare purposes than it is willing and able to appropriate. The use of the matching formula in § 403 of the Act, 42 U. S. C. § 603 (1964 ed., Supp. IV), supports this def-

erence to the fiscal decisions of state legislatures. The question of a State's authority to pay less than its standard of need, however, has never been expressly decided.

Assuming, *arguendo*, that a State need not appropriate sufficient funds to pay all eligible AFDC recipients the full amount of their need, it does not follow that it can distribute such funds as it deems appropriate in a manner inconsistent with the Social Security Act. The question involved here is not one of ends, it is one of means. Thus the United States Government, in its Memorandum as Amicus Curiae in *Rosado* v. *Wyman*, decided this day, *post*, at —, stated:

> "Maximums, whether so many dollars per individual or a total number of dollars per family, have an arbitrary aspect lacking from ratable reductions, since their application means that one family or individual will receive a smaller proportion of the amounts he is determined to need under the state's test than another family or individual. Where percentage reductions are used, the payment of every family is reduced proportionately . . . . [T]his aspect explains why Congress might wish to distinguish between maximums and ratable reductions as a means of reducing a state's financial obligation and, at least inferentially, to disfavor the former." *Id.*, at 6–7.

The District Court, in its initial ruling that the Maryland regulation was inconsistent with the Social Security Act, relied primarily on § 402 (a)(10) of the Act, which provides that "all individuals wishing to make application for aid to families with dependent children shall have opportunity to do so, and that aid to families with dependent children shall be furnished

with reasonable promptness *to all eligible individuals.*" (Emphasis added.) This provision was added by the Social Security Act Amendments of 1950, 64 Stat. 549. The House Committee on Ways and Means, where the provision originated, explained its purpose as follows:

> "Shortage of funds in aid to dependent children has sometimes, as in old-age assistance, resulted in a decision not to take more applications or to keep eligible families on waiting lists until enough recipients could be removed from the assistance rolls to make a place for them. . . . [T]his difference in treatment accorded to eligible people results in undue hardship on needy persons and is inappropriate in a program financed from Federal funds." H. R. Rep. No. 1300, 81st Cong., 1st Sess., 48 (1949).

In the court below, the appellants relied upon this legislative history to argue that the "eligible individuals" to whom aid must be furnished are the applicants for aid referred to in the beginning of the provision, and not the individual members of a family unit. I find nothing in the Act or in the legislative history of § 402 (a)(10) which supports that argument.

The purpose of the AFDC program, as stated in the Act, is to encourage "the care of dependent children in their own homes or in the homes of relatives by enabling each State to furnish financial assistance and rehabilitation and other services, as far as practicable under the conditions in each State, *to needy dependent children and the parents or relatives with whom they are living* to help maintain and strengthen family life . . . ." Social Security Act § 401 (emphasis added). The terms "dependent child" and "relative with whom any dependent child is living" are defined in § 406 of the Act, 42 U. S. C. § 606 (1964 ed., Supp. IV).

The aid provided through the AFDC program has always been intended for the individual dependent children, not for those who apply for the aid on their behalf. The Senate Committee on Finance, in its report on the Social Security Bill of 1935, stated this purpose in the following terms:

> "The heart of any program for social security must be the child. All parts of the Social Security Act are in a very real sense measures for the security of children. . . .
>
> "In addition, however, there is great need for special safeguards for many underprivileged children. Children are in many respects the worst victims of the depression. . . .
>
> "Many of the children included in relief families present no other problem than that of providing work for the breadwinner of the family. These children will be benefited through the work relief program and still more through the revival of private industry. But there are large numbers of children in relief families which will not be benefited through work programs or the revival of industry.
>
> "These are the children in families which have been deprived of a father's support and in which there is no other adult than one who is needed for the care of the children. . . .
>
> "With no income coming in, and with young children for whom provision must be made for a number of years, families without a father's support require public assistance, unless they have been left with adequate means or are aided by friends and relatives. . . . *Through cash grants adjusted to the needs of the family it is possible to keep the young children with their mother in their own home, thus*

*preventing the necessity of placing the children in institutions.* This is recognized by everyone to be the least expensive and altogether the most desirable method for meeting the needs of these families that has yet been devised." S. Rep. No. 628, 74th Cong., 1st Sess., 16–17 (1935) (emphasis added).

Prior to 1950, no specific provision was made for the need of the parent or other relative with whom the dependent child was living. Although this underscores the fact that the payments were intended to benefit the children and not the applicants who received those payments, the exclusion from the federal scheme of provision for the need of the caring relative operated effectively to dilute the ability of the AFDC payments to meet the need of the child. To correct this latter deficiency, the 1950 Amendments allowed provision for the needs of this caring relative. The Report of the House Comittee on Ways and Means stated:

> "Particularly in families with small children, it is necessary for the mother or another adult to be in the home full time to provide proper care and supervision. Since the person caring for the child must have food, clothing, and other essentials, amounts alloted to the children must be used in part for this purpose if no other provision is made to meet her needs. . . .
>
> "To correct the present anomalous situation wherein no provision is made for the adult relative and to enable the State to make payments that are more nearly adequate, the bill would include the relative with whom the dependent child is living as a recipient for Federal matching purposes. . . ." H. R. Rep. No. 1300, 81st Cong., 1st Sess., 46 (1949).

This amendment emphasizes the congressional concern with fully meeting the needs of the dependent children in a given family; and it would seem to negative the necessity of those children sharing their individual allocations with other essential members of the family unit.

There is other evidence that Congress intended each eligible recipient to receive his fair share of benefits under the AFDC program. The Social Security Act Amendments of 1962 provided that a state AFDC plan must "provide for the development and application of a program for [services to maintain and strengthen family life] *for each child* who receives aid to families with dependent children . . . ." 42 U. S. C. § 602 (a)(13) (1964 ed.). The 1967 amendments, which extended this program of "family services" to relatives receiving AFDC payments and "essential persons" living in the same home as the child and relative, retained the emphasis on providing these services to "*each* appropriate individual." Social Security Act, §§ 402 (a)(14), (15), 42 U. S. C. §§ 602 (a)(14), (15) (1964 ed., Supp. IV). The Senate Finance Committee Report on the 1967 Amendments stated:

> "Under the Social Security Act Amendment of 1962, an amendment was added to title IV requiring the State welfare agency to make a program for each child, identifying the services needed, and then to provide the necessary services. This has proven a useful amendment, for it has required the States to give attention to the children and to provide services necessary to carry out the plans for the individual child. . . . [T]he committee believes that it is essential to broaden the requirement for the program of services for each child to include the entire family. The committee bill would require, therefore, that the States establish a social services program for each AFDC family. Thus

there will be a broadened emphasis to include a recognition of the needs of all members of the family, including "essential persons." S. Rep. No. 744, 90th Cong., 1st Sess., 155 (1967).

These "family services" provisions are helpful in interpreting the words "all eligible individuals" in § 402 (a)(10) of the Act for they reveal Congress' overriding concern with meeting the needs of each eligible recipient of aid under the AFDC program. The resources commanded to meet those needs, as well as the definition of those individuals eligible to receive this aid, have expanded over the years. At first, only financial assistance was available. Now "family services" programs have been added.[2] In each case, however, the concern has been with meeting the needs of each eligible recipient.

[2] The benefits distributed under the AFDC program include "financial assistance and rehabilitation and other services." Social Security Act § 401. The term "aid to families with dependent children" is itself defined in § 406 (b) of the Act, as "money payments with respect to, or . . . medical care in behalf of or any type of remedial care recognized under State law" in behalf of independent children, the relatives with whom they live, and other "essential persons" residing with the relative and child.

The services provided by the Act for AFDC recipients include "family services" and "child-welfare services." "Family services" are defined by § 406 (d) of the Act, as "services to a family or any member thereof for the purpose of preserving, rehabilitating, reuniting, or strengthening the family, and such other services as will assist members of a family to attain or retain capability for the maximum self-support and personal independence." "Child-welfare programs" are defined by § 425 of the Act, 42 U. S. C. § 625 (1964 ed., Supp. IV), as "public social services which supplement, or substitute for, parental care and supervision for the purpose of (1) preventing or remedying, or assisting in the solution of problems which may result in, the neglect, abuse, exploitation, or delinquency of children, (2) protecting and caring for homeless, dependent, or neglected children, (3) protecting and promoting the welfare of children of working mothers, and (4) otherwise strengthening of their own homes where possible or, where needed, the pro-

A further indication that the phrase "all eligible individuals" as used in § 402 (a)(10) refers to the individual beneficiaries of aid, and not those who apply for and receive the payments, lies in the provisions of the Act which concern the computation of federal payments to the States. Social Security Act § 403. These payments are presently computed in relation to the State's contribution to individual recipients, with federal payment of five-sixths of the first $18 a month per recipient of state expenditure, and further payment up to a maximum of $32 a month per recipient. There is no limitation on federal payments based on family size

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vision of adequate care of children away from their homes in foster family homes or day-care or other child-care facilities." In addition, § 402 (a)(15) of the Act requires the State AFDC plan to provide for the development of a program for each appropriate relative and dependent child receiving aid under the plan, and other "essential persons" living with a relative and child receiving such aid, "with the objective of—(i) assuring, to the maximum extent possible, that such relative, child, and individual will enter the labor force and accept employment so that they will become self-sufficient, and (ii) preventing or reducing the incidence of births out of wedlock and otherwise strengthening family life. . . ."

Section 432 of the Act, 42 U. S. C. § 632 (1964 ed., Supp IV), provides for the establishment of work-incentive programs for AFDC recipients which include the placement of recipients over the age of 16 in employment, "institutional and work experience training for those individuals for whom such training is likely to lead to regular employment," and "special work projects for individuals for whom a job in the regular economy cannot be found." See also Social Security Act § 402 (a)(19).

The State must also provide foster care in accordance with § 408 of the Act. Social Security Act § 402 (a)(20). And whenever the State feels that AFDC payments may not be used in the best interests of the child, it may provide for counseling or guidance with respect to the use of such payments and the management of other funds. Social Security Act § 405, 42 U. S. C. § 605.

in the present provisions, nor has there ever been such a limitation in previous versions of the Act.

Section 403 (d)(1) of the Act imposes a limitation on federal payments to States as respects children whose eligibility is based upon the absence from the home of a parent. Under this section, the number of AFDC children under the age of 18 for which federal sharing is available cannot exceed the ratio of AFDC children eligible because of an "absent parent" to the total child population of a State as of January 1, 1968. Appellants have argued that this limitation somehow indicates congressional approval of the maximum grant concept. The District Court below properly rejected that contention. The Report of the House Committee on Ways and Means indicates that the purpose of the limitation is to keep federal financial participation "within reasonable bounds" and to "give the State an incentive to make effective use of the constructive programs which the bill would establish." H. R. 544, 90th Cong., 1st Sess., 110. Keeping federal participation "within reasonable bounds" was tied to the fact that the "absent parent" category of AFDC recipients was the one which was growing most rapidly. *Ibid.* This provision, however, relates only to federal contributions to a State's AFDC program, and does not authorize the State's termination of aid to any of the children who would otherwise be eligible for aid because of an absent parent. Representative Mills explained the purpose of this limitation to the House in the following terms:

> "Finally, Mr. Chairman, the bill would add a provision to present law which would limit Federal financing for the largest AFDC category—where the parent is absent from the home—to the proportion of each State's total child population that is now

receiving AFDC in this category. This provision, we believe, would give the States an additional incentive to make effective use of the constructive programs which the bill would establish. Moreover, this limitation on Federal matching will not prevent any deserving family from receiving aid payments. The States would not be free to keep any family off the rolls to keep within this limitation because there is a requirement in the law that requires equal treatment of recipients and uniform administration of a program within a State. . . ." 113 Cong. Rec. 10670 (August 17, 1967).

In sum, the provisions of the Act which compute the amount of federal contribution to state AFDC programs are related to state payments to individual recipients and have consistently excluded any limitation based upon family size. The limitation contained in § 403 (d)(1) of the Act affects only the amount of federal matching funds in one category of aid, and in no way indicates congressional approval of maximum grants.

The purpose of the AFDC provisions of the Social Security Act is not only to provide for the needs of dependent children, but also "to keep the young children with their mother in their own home, thus preventing the necessity of placing the children in institutions." S. Rep. No. 628, 74th Cong., 1st Sess., 17 (1935). Also see Social Security Act § 401. As the District Court noted, however, "the maximum grant regulation provides a powerful economic incentive to break up large families by placing 'dependent children' in excess of those whose subsistence needs, when added to the subsistence needs of other members of the family, exceed the maximum grant, in the homes of persons included in the class of eligible relatives." 297 F. Supp., at 456.

By this device, payments for the "excess" children can be obtained.

> "If Mrs. Williams were to place two of her children of twelve years or over with relatives, each child so placed would be eligible for assistance in the amount of $79.00 per month, and she and her six remaining children would still be eligible to receive the maximum grant of $250.00. If Mr. and Mrs. Gary were to place two of their children between the ages of six and twelve with relatives, each child so placed would be eligible for assistance in the amount of $65.00 per month, and they and their six remaining children would still be eligible to receive the maximum grant of $250.00. *Id.*, at 453–454.

The District Court correctly states that this incentive to break up family units created by the maximum grant regulation is in conflict with a fundamental purpose of the Act.

The history of the Social Security Act thus indicates that Congress intended the financial benefits, as well as the other benefits, of the AFDC program to reach each individual recipient eligible under the federal criteria. It was to this purpose that Congress had reference when it commanded in § 402 (a)(10) of the Act that aid to families with dependent children shall be furnished to "all eligible individuals."[3]

The Court attempts to avoid the effect of this command by stating that "it is the *family* grant that is affected." *Ante*, at —. The implication is that, regardless of how the AFDC payments are computed or to whom they apply, the payments will be used by the parents for the benefit of all the members of the family

[3] Note 1, *supra*.

unit. This is no doubt true. But the fact that parents may take portions of the payments intended for certain children to give to other children who are not given payments under the State's AFDC plan, does not alter the fact that aid is not being given *by the State* to the latter children. And it is payments by the State, not by the parents, to which the command of § 402 (a)(10) is directed. The Court's argument would equate family grant maximums with percentage reductions, but the two are, in fact, quite distinct devices for limiting welfare payments. If Congress wished to design a scheme under which each family received equal payments, irrespective of the size of the family, I see nothing that would prevent it from doing so. But that is not the scheme of Congress under the present Act.

Against the legislative history and the command of § 402 (a)(10), the appellants cite three provisions of the Social Security Act as recognizing the validity of state maximum grant regulations.

The first of these provisions is § 402 (a)(23) of the Act, 42 U. S. C. § 602 (a)(23) (1964 ed., Supp. IV), which provides:

> "A State plan for aid and services to needy families with children must . . . provide that by July 1, 1969 the amounts used by the State to determine the needs of individuals will have been adjusted to reflect fully changes in living costs since such amounts were established, and any maximums that the State imposes on the amount of aid paid to families will have been proportionately adjusted."

This section had its genesis in an Administration proposal to require States to pay fully the amounts required by their standard of need, and also to make cost-of-living adjustments to that standard of need by July 1, 1968, and annually thereafter. House Committee on

Ways and Means, Hearing on H. R. 5710, 90th Cong., 1st Sess., 59 (1967); House Committee on Ways and Means, Section-by-Section Analysis of H. R. 5710, 90th Cong., 1st Sess., 118–119 (1967). The bill which emerged from the House as H. R. 12080, however, did not include any provision relating to an increase in benefit levels or adjustments to standards of need. See Senate Committee on Finance, Hearings on H. R. 12080, 90th Cong., 1st Sess., 109–144 (1967). A provision requiring a cost-of-living adjustment in the standard of need by July 1, 1969, and annually thereafter was added to the House bill by the Senate Finance Committee, and this provision also required that "any maximums . . . on the amount of aid" be proportionately adjusted. S. Rep. No. 744, 90th Cong., 1st Sess., 193 (1967). An amendment of the bill was proposed in the Senate which would have required a positive increase in AFDC payments, but that amendment was rejected. 113 Cong. Rec. 33560 (Nov. 21, 1967). The Senate-House Conference Committee adopted the Senate AFDC cost-of-living provision, omitting only the requirement for annual updating of need standards after July 1, 1969. H. R. Rep. No. 1030 (Conference Report), 90th Cong., 1st Sess., 63 (1967).

Nowhere in any of the hearings, committee reports, or floor debates, is there shown a congressional intent to validate state maximum grant regulations by the provisions of § 402 (a)(23). Rather, the legislative history shows that Congress was exclusively concerned with increasing the income of AFDC recipients. If Congress had not required cost-of-living adjustments in state-imposed grant maximums, the States could easily nullify the effect of the cost-of-living adjustments for many AFDC families by retaining the grant ceilings in force before the adjustment was made. Congress was, to be sure, acknowledging the existence of maximum grant

regulations. But every congressional reference to an existing practice does not automatically imply approval of that practice. The task of statutory construction requires more. It requires courts to look to the context of that reference, and to the history of relevant legislation. In the present context, the reference to maximum grants was necessary to preserve the integrity of the cost-of-living adjustment required by the bill. No further significance can legitimately be read into that reference.

Appellants also rely on § 108 (a) of P. L. 87–543, 76 Stat. 172, a provision of the Public Welfare Amendments of 1962 that amended § 406 of the Act. This amendment, which has since been superseded, authorized "protective payments" to an individual other than the relative with whom the dependent child is living. The problem which this amendment was designed to cure was that some payees were unable to manage their funds so that the dependent children received the full benefit of the AFDC payments. Hearings on H. R. 10606 before the Senate Committee on Finance, 87th Cong., 2d Sess., 17 (1962). The House bill required "a meeting of all need as determined by the State" as a condition to including "protective payments" within the definition of "aid to families with dependent children." The Senate Finance Committee changed that requirement, however, by an amendment which authorized federal funding of "protective payments" if the state-determined need of individuals with respect to whom such payments were made was fully met by their assistance payment and other income or resources. The Senate Committee explained this provision as follows:

> "The effect of this provision is to make it possible for protective payments to be made in behalf of certain ADC recipients in States in which there is a

> maximum limiting the amount of assistance an individual may receive. These are the cases in which the statutory maximum does not prevent need from being met in full according to the State's standards." S. Rep. No. 1589, 87th Cong., 2d Sess., 1 U. S. Code Cong. & Adm. News, 1956 (1962).

This reference to a state-imposed maximum can hardly be interpreted as a congressional approval of a family maximum grant. If anything, it implicitly disapproves the concept by withholding federal payments with respect to individuals receiving "protective payments" when a maximum grant operates to prevent these individuals from receiving the full amount of their state-determined need.

The final statutory provision relied upon by appellants is § 220 (a) of P. L. 90–248, 81 Stat. 821, which added to the Medical Assistance Title of the Act a new § 1903 (f), 42 U. S. C. § 1396b (f) (1964 ed., Supp. IV). This section limits federal financial participation in medical assistance benefits to those whose incomes do not exceed 133⅓% of the highest amount of AFDC assistance paid to a family of the same size without any income or resources. This section, however, also provides: "If the Secretary [of Health, Education, and Welfare] finds that the operation of a uniform maximum limits payments to families of more than one size, he may adjust the amount otherwise determined . . . to take account of families of different sizes." The purpose of this provision was to allow qualification as medically indigent of those individuals who would have qualified but for the operation of an AFDC grant maximum, and thus prevent the extension of the operation of grant maximums into the Medical Assistance Title. Congressional rejection of grant maximums in the Medical Assistance Title does not infer their approval in the context of the AFDC provisions. Quite the contrary would seem to be the case.

In all of the legislative provisions relied upon by the appellants, the congressional reference to maximum grants has been made in the context of attempting to alleviate the harsh results of their application, not in a context of approving and supporting their operation. The three statutory references cited by appellants and discussed above are clearly inadequate to overcome the long history of concern manifested in the AFDC provisions of the Social Security Act for meeting the needs of each eligible recipient, and the command of § 402 (a) (10) of the Act to that effect.

Appellants tender one further argument as to the compliance of the Maryland maximum grant regulation with the Social Security Act. That argument is that the Department of Health, Education, and Welfare has not disapproved of any of the Maryland plans which have included maximum grant provisions, and that this lack of disapproval by HEW is a binding administrative determination as to the conformity of the regulation with the Social Security Act. That argument was thoroughly explored by the District Court below in its supplemental opinion. The District Court accepted the claim that HEW considers the Maryland maximum grant regulation not to be violative of the Act, but held:

> "In view of the fact, however, that there is no indication from administrative decision, promulgated regulation, or departmental statement that the question of the conformity of maximum grants to the Act has been given considered treatment, we believe that the various actions and inactions on the part of HEW are not entitled to substantial, much less decisive, weight in our consideration of the instant case." 297 F. Supp., at 460.

HEW seldom has formally challenged the compliance of a state welfare plan with the terms of the Social Se-

curity Act. See Note, Federal Judicial Review of State Welfare Practices, 67 Col. L. Rev. 84, 91 (1967). The mere absence of such a formal challenge, whatever may be said for its constituting an affirmative determination of the compliance of a state plan with the Social Security Act, is not such a determination as is entitled to decisive weight in the judicial determination of this question.

On the basis of the inconsistency of the Maryland maximum grant regulation with the Social Security Act, I would affirm the judgment below.

# SUPREME COURT OF THE UNITED STATES

No. 131.—October Term, 1969

Edmund P. Dandridge, Jr., et al., Appellants, v. Linda Williams et al. } On Appeal From the United States District Court for the District of Maryland.

[April 6, 1970]

Mr. Justice Marshall, whom Mr. Justice Brennan joins, dissenting.

For the reasons stated by Mr. Justice Douglas, to which I add some comments of my own, I believe that the Court has erroneously concluded that Maryland's maximum grant regulation is consistent with the federal statute. In my view, that regulation is fundamentally in conflict with the basic structure and purposes of the Social Security Act.

More important in the long run than this misreading of a federal statute, however, is the Court's emasculation of the Equal Protection Clause as a constitutional principle applicable to the area of social welfare administration. The Court holds today that regardless of the arbitrariness of a classification it must be sustained if any state goal can be imagined which is arguably furthered by its effects. This is so even though the classification's under- or over-inclusiveness clearly demonstrates that its actual basis is something other than that asserted by the State, and even though the relationship between the classification and the state interests which it purports to serve is so tenuous that it could not seriously be maintained that the classification tends to accomplish the ascribed goals.

The Court recognizes, as it must, that this case involves "the most basic economic needs of impoverished human beings," and that there is therefore a "dramati-

cally real factual difference" between the instant case and those decisions upon which the Court relies. The acknowledgment that these dramatic differences exist is a candid recognition that the Court's decision today is wholly without precedent. I cannot subscribe to the Court's sweeping refusal to accord the Equal Protection Clause any role in this entire area of the law, and I therefore dissent from both parts of the Court's decision.

## I

At the outset, it should be emphasized exactly what is involved in determining whether this maximum grant regulation is consistent with and valid under the federal law. In administering its AFDC program, Maryland has established its own standards of need, and they are not under challenge in this litigation. Indeed, the District Court specifically refused to require additional appropriations on the part of the State or to permit appellees to recover a monetary judgment against the State. At the same time, however, there is no contention, nor could there be any, that the maximum grant regulation is in any manner related to calculation of need.[1] Rather, it arbitrarily cuts across state-defined standards of need to deny any additional assistance with respect to the fifth or any succeeding child in a family.[2]

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[1] The Court is thus wrong in speaking of "the greater ability of large families—because of the inherent economies of scale—to accommodate their needs to diminished per capita payments." Those economies have already been taken into account once in calculating the standard of need. Indeed, it borders on the ludicrous to suggest that a large family is more capable of living on perhaps 50% of its standard of need than a small family is on 95%.

[2] Because of minor variations in the calculation of the subsistence needs of particular families, and because the maximum grant varies between $240 and $250 per month, depending upon the county in which a particular family resides, the cutoff point between families which receive the full subsistence allowance and those which do not

In short, the regulation represents no less than the refusal of the State to give any aid whatsoever for the support of certain dependent children who meet the standards of need which the State itself has established.

Since its inception in the Social Security Act of 1935, the focus of the federal AFDC program has been to provide benefits for the support of dependent children of needy families with a view toward maintaining and strengthening family life within the family unit. As succinctly stated by the Senate Committee on Finance, "[t]he objective of the aid to dependent children program is to provide cash assistance for needy children *in their own homes.*" [3] In meeting these objectives, moreover, Congress has provided the outlines that the AFDC plan is to follow if a State should choose to participate in the federal program. The maximum grant regulation, however, does not fall within these outlines or accord with the purposes of the Act. And the Court by approving it allows for a complete departure from the congressional intent.

The phrase "aid to families with dependent children," from which the AFDC program derives its name, appears in § 402 (a)(10) of the Act, 42 U. S. C. § 602 (a)(10), and is defined in 42 U. S. C. § 606 (b) as, *inter alia*, "money payments *with respect to* . . . dependent children." (Emphasis added.) Moreover, the term "dependent child" is also extensively defined in the Act.

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is not precisely families of more than six members. In practice, it appears that the subsistence needs of a family of six members are fully met. The needs of the seventh member (*i. e.*, the fifth or sixth child, depending upon whether one or both parents are within the assistance unit), as defined by the State are met, if at all, only to a very small extent. In the usual situation, no payments whatever would be made with respect to any additional eligible dependent children.

[3] S. Rep. No. 165, 87th Cong., 1st Sess., 6 (1961). (Emphasis added.)

See 42 U. S. C. § 606 (a). Nowhere in the Act is there any sanction or authority for the State to alter those definitions—that is, to select arbitrarily from among the class of needy dependent children those whom it will aid. Yet the clear effect of the maximum grant regulation is to do just that, for the regulation creates in effect a class of otherwise eligible dependent children with respect to whom no assistance is granted.

It was to disapprove just such an arbitrary device to limit AFDC payments that Congress amended § 402 (a)(10) in 1951 to provide that aid "shall be furnished with reasonable promptness *to all eligible individuals*." (Emphasis added.) Surely, as my Brother DOUGLAS demonstrates, this statutory language means at least that the State must take into account the needs of, and provide aid with respect to, *all* needy dependent children. Indeed, that was our assessment of the congressional design embodied in the AFDC program in *King* v. *Smith*, 392 U. S. 309, 329–330, 333 (1968).

The opinion of the Court attempts to avoid this reading of the statutory mandate by the conclusion that parents will see that all the children in a large family share in whatever resources are available so that all children "do receive some aid." And "[s]o long as some aid is provided to all eligible families and all eligible children, the statute itself is not violated." The Court also views sympathetically the State's contention that the "all eligible individuals" clause was designed solely to prevent discrimination against new applicants for AFDC benefits. I am unpersuaded, however, by the view that Congress simultaneously prohibited discrimination against one class of dependent children—those in families not presently receiving benefits—and at the same time sanctioned discrimination against another class—those children in large families. Furthermore, the Court's interpretation would permit a State to impose

a drastically reduced maximum grant limitation—or, indeed, a uniform payment of, say, $25 per family per month—as long as all families were subject to the rule. Thus, merely by purporting to compute standards of need and granting some benefits to all eligible families, the State would comply with the federal law—in spite of the fact that the needs of none or very few dependent children would thereby be taken into account in the actual assistance granted. I cannot agree that Congress intended that a State should be entitled to participate in the federally funded AFDC program under such circumstances.

Moreover, the practical consequences of the maximum grant regulation in question here confirm me in the view that it is invalid. Under the complicated formula for determining the extent of federal support for the AFDC program in the various States, the federal subsidy is based upon "the total number of recipients of aid to families with dependent children." 42 U. S. C. § 603 (a). "Recipients" is defined in the same provision to include both dependent children and the eligible relative or relatives with whom they live. There is, however, no limitation upon the number of recipients per family unit for whom the federal subsidy is paid to the States. Thus, when a maximum family grant regulation is in effect, the State continues to receive a federal subsidy for each and every dependent child even though the State passes *none* of this subsidy on to the large families for the use of the additional dependent children.

Specifically, in Maryland, the record in this case indicates that the State spends an average of almost $40 per recipient per month. Under the federal matching formula, federal funds provide $22 of the first $32 per recipient, with anything above $32 being supplied by the

State.[4] However, the Federal Government provides a maximum of $22 for every dependent child, although none of that amount is received by the needy family in the case of the fifth or sixth and succeeding children. The effect is to shift a greater proportion of the support of large families from the State to the Federal Government as the family size increases. Indeed, if the size of the family should equal or exceed 11, the State would succeed in transferring the entire support burden for the family to the Federal Government, or even make a "profit" in the sense that it would receive more from the Federal Government with respect to the family than the $250 maximum which is actually paid to that family. It is impossible to conclude that Congress intended so incongruous a result. On the contrary, when Congress undertook to subsidize payments on behalf of *each recipient*—including each dependent child—it seems clear that Congress intended each needy dependent child to receive the use and benefit of at least the incremental amount of the federal subsidy paid on his account.

A second effect of the maximum family grant regulation further demonstrates its inconsistency with the federal program. As administered in Maryland, the regulation serves to provide a strong economic incentive to the disintegration of large families. This is so because a family subject to the maximum regulation can, merely by placing the ineligible children in the homes of other relatives, receive additional monthly payments for the support of these additional dependent children.[5]

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[4] More technically, the Federal Government supplies five-sixths of the overall amount spent per recipient up to $18, plus one-half of the amount from $18 to $32, to a total of $22. See 42 U. S. C. § 603.

[5] For example, in the case of the appellee, Mrs. Williams, if she were to place two of her children over 12 years of age with relatives, payments of $79 per month would be paid with respect to each

When families are receiving support which is concededly far below their bare minimum subsistence needs, the economic incentive which the maximum grant regulation provides to divide up large families can hardly be viewed as speculative or negligible. The opinion of this Court does not even dispute this effect.[6] The Court answers by saying that the family relationship "may be attenuated but it cannot be destroyed." Yet it was just this kind of attenuation that, as the legislative history conclusively demonstrates,[7] Congress was concerned with eliminating in establishing the AFDC program. The Court's rationale takes a long step backwards toward the time when persons were dependent upon the charity of their relatives—the very situation meant to be remedied by AFDC.

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child. Thus, a total of $408 per month, or $158 above the maximum, would be available for the support of Mrs. Williams and her eight children. Similarly, if appellees Mr. and Mrs. Gary were to place with relatives two of their children who are between the ages of 6 and 12 years, each child would be eligible to receive $65. Hence Mr. and Mrs. Gary and their eight children would receive support in the amount of $380 per month, or some $130 above the family maximum.

[6] The State has contended that the economic incentive to the disintegration of large families which the maximum grant regulation provides is merely speculative. However, serious doubt is cast upon this view by the stipulation of facts entered in the District Court which states in part that, despite the strong desire to keep their families together, appellees in this case were having great difficulty in doing so because of the limitations on their grants.

[7] In S. Rep. No. 628, 74th Cong., 1st Sess., 17 (1935), the original goals of the AFDC program are stated as follows: "With no income coming in, and with young children for whom provision must be made for a number of years, families without a father's support require public assistance, unless they have been left with adequate means or are aided by friends and relatives. . . . Through cash grants *adjusted to the needs of the family* it is possible to keep young children *with their mother in their own home*, thus preventing the necessity of placing children in institutions. This is recognized

Despite its denial of the principle that payments should be made with regard to all eligible individuals and its conflict with the basic purposes of the Act, the Maryland regulation is nevertheless found by the Court to be consistent with the federal law because the existence of such regulations has been recognized by Congress. To bolster this view, the Court argues that the same conclusion has been reached by the department charged with administering the Act. On neither score is the Court convincing.

With regard to the position of the Secretary of HEW, about all that can be said with confidence is that we do not know his views on the validity of family maximum regulations within the federal structure.[8] The reason is simple—he has not been asked. Thus, con-

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by everyone to be the least expensive and altogether most desirable method for meeting the needs of these families that has yet been devised." (Emphasis added.) See also H. R. Rep. No. 615, 74th Cong., 1st Sess., 10 (1935).

These goals remain the same today. See 42 U. S. C. § 601. See generally Note, Welfare's "Condition X," 76 Yale L. J. 1222, 1232–1233 (1967).

[8] In various briefs submitted both to this Court and to other courts in analogous litigation, the Secretary of HEW and the Solicitor General have taken the occasion to label family maximum grant regulations as "arbitrary," oppressive of large families, as resulting in "patently different treatment of individuals," and having received, at least inferentially, the disfavor of Congress. See, *e. g.*, Memorandum for the United States as Amicus Curiae, *Rosado* v. *Wyman*, No. 540, 1969 Term; Brief of Robert H. Finch, Secretary of Health, Education, and Welfare as Amicus Curiae, *Lampton* v. *Bonin*, 299 F. Supp. 336, 304 F. Supp. 1384 (D. C. E. D. La. 1969); Brief of Robert H. Finch, etc., *Jefferson* v. *Hackney*, 304 F. Supp. 1332 (D. C. N. D. Tex. 1969). Hence the views of HEW on the precise issue presented in the instant case are, at the very best, ambiguous and quite possibly the opposite of what the Court ascribes to it.

trary to our admonition given today to the district courts in considering cases in this area, that whenever possible they "should obtain the views of HEW in those cases where it has not set forth its views," *Rosado* v. *Wyman*, *ante*, at —, the Government was not invited to file a brief in this case. Perhaps the reason is that this Court is fully versed in the complexities of the Federal AFDC program. I am dubious, however, when the Court explicitly relies on the failure of the Secretary to disapprove the Maryland welfare scheme. For if anything at all is completely clear in this area of the law it is that the failure of HEW to cut off funds from a state program has no meaning at all. See *Rosado* v. *Wyman*, *supra*, at — (DOUGLAS, J., concurring).

Finally, the Court tells us that Congress has said that the Act permits maximum grant regulations. If it had, this part of the case would be obvious; but, of course, it has not. There is no indication Congress has focused on the family maximum as opposed to individual or other maxima or combinations of such limiting devices.[9] And, to the extent that it could be said to have

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[9] The maximum may be expressed in terms of a flat dollar amount, as a percentage of the individual's budgetary deficit (*i. e.*, the difference between need and other income), or in both ways. A system of individual maximums may, or may not, be combined with a family maximum, or, alternatively, a family maximum may be imposed in the absence of individual maximums. See generally Department of Health, Education, and Welfare, State Maximums and Other Methods of Limiting Money Payments to Recipients of Special Types of Public Assistance (1968); Sparer, Social Welfare Law Testing, 12 Prac. Law (No. 4) 13, 21. In addition, there are differing methods by which family maximums may be related to other resources available to the family. Some States, including Maryland, subtract available resources from the state-calculated need; in other jurisdictions, available resources are

done so, as my Brother DOUGLAS fully demonstrates, it was in the context of disapproving all maxima and ameliorating the harshness of their effects. See also *Rosado* v. *Wyman, supra,* at —. These slender threads of legislative comment simply cannot be woven into a conclusion of legislative sanction. Cf. *Shapiro* v. *Thompson,* 394 U. S. 618, 638–640 (1969). Furthermore, it is fundamental that in construing legislation, "we must not be guided by a single sentence or member of a sentence, but [should] look to the provisions of the whole law, and to its object and policy." *Richards* v. *United States,* 369 U. S. 1, 11 (1961). We concluded in *King* v. *Smith, supra,* after an extensive review of the AFDC program, that Congress "intended to provide programs for the economic security and protection of *all* children" and did not intend "arbitrarily to leave one class of destitute children entirely without meaningful protection." 392 U. S., at 330. (Emphasis in original.) That reasoning is likewise applicable to the instant case, in which the maximum grant regulation excludes consideration of the needs of a certain class of dependent children in large families. It is apparent, therefore, that Maryland's maximum grant regulation is not consistent with the Social Security Act, and hence appellees were entitled to the injunction they obtained against its operation.

## II

Having decided that the injunction issued by the District Court was proper as a matter of statutory construction, I could affirm on that ground alone. However, the majority has of necessity passed on the constitutional issues. I believe that in overruling the decision of this and every other district court that has passed on the

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subtracted from the family maximum. See, *e. g., Dews* v. *Henry,* 297 F. Supp. 587 (D. C. D. Ariz. 1969), involving litigation with respect to the Arizona family maximum.

validity of the maximum grant device,[10] the Court both reaches the wrong result and lays down an insupportable test for determining whether a State has denied its citizens the equal protection of the laws.

The Maryland AFDC program in its basic structure operates uniformly with regard to all needy children by taking into account the basic subsistence needs of all eligible individuals in the formulation of the standards of need for families of various sizes. However, superimposed upon this uniform system is the maximum grant regulation, the operative effect of which is to create two classes of needy children and two classes of eligible families: those small families and their members who receive payments to cover their subsistence needs and those large families who do not.[11]

This classification process effected by the maximum grant regulation produces a basic denial of equal treatment. Persons who are concededly similarly situated

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[10] The lower courts have been unanimous in the view that maximum grant regulations such as Maryland's are invalid. See *Dews* v. *Henry, supra; Westberry* v. *Fisher,* 297 F. Supp. 1109 (D. C. D. Me. 1969); *Lindsey* v. *Smith,* 303 F. Supp. 1203 (D. C. W. D. Wash. 1969); *Kaiser* v. *Montgomery,* — F. Supp. — (D. C. N. D. Cal. 1969). See also *Collins* v. *State Board of Social Welfare,* 248 Iowa 369, 81 N. W. 2d 4 (1957) (family maximum invalid under equal protection clause of state constitution); *Metcalf* v. *Swank,* 293 F. Supp. 268 (D. C. N. D. Ill. 1968) (dictum).

[11] In theory, no payments are made with respect to needy dependent children in excess of four or five as the case may be. In practice, of course, the excess children share in the benefits which are paid with respect to the other members of the family. The result is that support for the entire family is reduced below minimum subsistence levels. However, for purposes of equal protection analysis, it makes no different whether the class against which the maximum grant regulation discriminates is defined as eligible dependent children in excess of the fourth or fifth, or, alternatively, as individuals in large families generally, that is, those with more than six members.

(dependent children and their families), are not afforded equal, or even approximately equal, treatment under the maximum grant regulation. Subsistence benefits are paid with respect to some needy dependent children; nothing is paid with respect to others. Some needy families receive full subsistence assistance as calculated by the State; the assistance paid to other families is grossly below their similarly calculated needs.

Yet, as a general principle, individuals should not be afforded different treatment by the State unless there is a relevant distinction between them, and "a statutory discrimination must be based on differences that are reasonably related to the purposes of the Act in which it is found." *Morey* v. *Doud*, 354 U. S. 457, 465 (1957). See *Gulf, Colorado & Santa Fe Ry.* v. *Ellis*, 165 U. S. 150, 155 (1897). Consequently, the State may not, in the provision of important services or the distribution of governmental payments, supply benefits to some individuals while denying them to others who are similarly situated. See, *e. g.*, *Griffin* v. *County School Board of Prince Edward County*, 377 U. S. 218 (1964).

In the instant case, the only distinction between those children with respect to whom assistance is granted and those children who are denied such assistance is the size of the family into which the child permits himself to be born. The class of individuals with respect to whom payments are actually made (the first four or five eligible dependent children in a family), is grossly underinclusive in terms of the class which the AFDC program was designed to assist, namely *all* needy dependent children. Such underinclusiveness manifests "a *prima facie* violation of the equal protection requirement of reasonable classification," [12] compelling the State to come forward with a persuasive justification for the classification.

[12] Tussman & tenBroek, The Equal Protection of the Laws, 37 Calif. L. Rev. 341, 348 (1949).

The Court never undertakes to inquire for such a justification; rather it avoids the task by focusing upon the abstract dichotomy between two different approaches to equal protection problems which have been utilized by this Court.

Under the so-called "traditional test," a classification is said to be permissible under the Equal Protection Clause unless it is "without any reasonable basis." *Lindsley* v. *Natural Carbonic Gas Co.*, 220 U. S. 61, 78 (1911).[11] On the other hand, if the classification affects a "fundamental right," then the state interest in perpetuating the classification must be "compelling" in order to be sustained. See, *e. g.*, *Shapiro* v. *Thompson*, *supra*; *Harper* v. *Board of Elections*, 383 U. S. 663 (1966); *McLaughlin* v. *Florida*, 379 U. S. 184 (1964).

This case simply defies easy characterization in terms of one or the other of these "tests." The cases relied on by the Court, in which a "mere rationality" test was actually used, *e. g.*, *Williamson* v. *Lee Optical Co.*, 348 U. S. 483 (1955), are most accurately described as involving the application of equal protection reasoning to the regulation of business interests. The extremes to which the Court has gone in dreaming up rational bases for state regulation in that area may in many instances be ascribed to a healthy revulsion from the Court's earlier excesses in using the Constitution to protect interests which have more than enough power to protect themselves in the legislative halls. This case, involving the literally vital interests of a powerless minority—poor families without breadwinners—is far removed from the area of business regulation, as the Court concedes. Why then is the standard used in those cases imposed here? We are told no more than that this

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[11] See generally Developments in the Law—Equal Protection, 82 Harv. L. Rev. 1065, 1076–1087 (1969).

case falls in "the area of economics and social welfare," with the implication that from there the answer is obvious.

In my view, equal protection analysis of this case is not appreciably advanced by the *a priori* definition of a "right," fundamental or otherwise.[14] Rather, concentration must be placed upon the character of the classification in question, the relative importance to individuals in the class discriminated against of the governmental benefits which they do not receive, and the asserted state interests in support of the classification. As we said only recently, "In determining whether or not a state law violates the Equal Protection Clause, we must consider the facts and circumstances behind the law, the interests which the State claims to be protecting, and the interests of those who are disadvan-

[14] See generally Van Alstyne, The Demise of the Right-Privilege Distinction in Constitutional Law, 81 Harv. L. Rev. 1439 (1968). Appellees do argue that their "fundamental rights" are infringed by the maximum grant regulation. They cite, for example, *Skinner* v. *Oklahoma*, 316 U. S. 535 (1942), for the proposition that the "right of procreation" is fundamental. This statement is no doubt accurate as far as it goes, but the effect of the maximum grant regulation upon the right of procreation is marginal and indirect at best, totally unlike the compulsory sterilization law which was at issue in *Skinner*.

At the same time the Court's insistence that equal protection analysis turns on the basis of a closed category of "fundamental rights" involves a curious value judgment. It is certainly difficult to believe that a person whose very survival is at stake would be comforted by the knowledge that his "fundamental" rights are preserved intact.

On the issue of whether there is a "right" to welfare assistance, see generally Graham, Public Assistance: The Right To Receive; the Obligation To Repay, 43 N. Y. U. L. Rev. 451 (1968); Harvith, Federal Equal Protection and Welfare Assistance, 31 Albany L. Rev. 210 (1967); Note, Welfare Due Process: The Maximum Grant Limitation on the Right To Survive, 3 Ga. L. Rev. 459 (1969). See also Universal Declaration of Human Rights, Art. 25.

taged by the classification." *Kramer* v. *Union School District*, 395 U. S. 621, 626 (1969), quoting *Williams* v. *Rhodes*, 393 U. S. 23, 30 (1968).[15]

It is the individual interests here at stake which, as the Court concedes, most clearly distinguish this case from the "business regulation" equal protection cases. AFDC support to needy dependent children provides the stuff which sustains those children's lives: food, clothing, shelter.[16] And this Court has already recognized several times that when a benefit, even a "gratuitous" benefit, is necessary to sustain life, stricter constitutional standards, both procedural[17] and substantive,[18] are applied to the deprivation of that benefit.

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[15] This is essentially what this Court has done in applying equal protection concepts in numerous cases, though the various aspects of the approach appear with a greater or lesser degree of clarity in particular cases. See, *e. g.*, *McLaughlin* v. *Florida*, *supra*; *Rinaldi* v. *Yeager*, 384 U. S. 305 (1966); *Carrington* v. *Rash*, 380 U. S. 89 (1965); *Douglas* v. *California*, 372 U. S. 353 (1963); *Skinner* v. *Oklahoma*, *supra*.

For an application of this approach to several welfare questions, see Note, Equal Protection as a Measure of Competing Interests in Welfare Litigation, 21 Me. L. Rev. 175 (1969).

[16] See also *Rothstein* v. *Wyman*, 303 F. Supp. 339, 346–347 (D. C. S. D. N. Y. 1969); *Harvith*, *supra*, n. 28, at 222–226.

[17] See *Sniadach* v. *Family Finance Corp.*, 394 U. S. 337, 340–342 (1969) (relying on devastating impact of wage garnishment to require prior hearing as a matter of due process); *Goldberg* v. *Kelly*, 397 U. S. —, — (1970): "Thus the crucial factor in this context—a factor not present in the case of the blacklisted government contractor, the discharged government employee, the taxpayer denied a tax exemption, or virtually anyone else whose governmental largesse is ended—is that termination of aid pending resolution of a controversy over eligibility may deprive an *eligible* recipient of the very means by which to live while he waits."

[18] Compare *Shapiro* v. *Thompson*, *supra*, at 627, striking down one-year residency requirement for welfare eligibility as violation of equal protection, and noting that the benefits in question are "the

Nor is the distinction upon which the deprivation is here based—the distinction between large and small families—one which readily commends itself as a basis for determining which children are to have support approximating subsistence and which are not. Indeed, governmental discrimination between children on the basis of a factor over which they have no control—the number of their brothers and sisters—bears some resemblance to the classification between legitimate and illegitimate children which we condemned as a violation of the Equal Protection Clause in *Levy* v. *Louisiana*, 391 U. S. 68 (1968).

The asserted state interests in the maintenance of the maximum grant regulation, on the other hand, are hardly clear. In the early stages of this litigation, the State attempted to rationalize the maximum grant regulation on the theory that it was merely a device to conserve state funds, in the language of the answer, "a legitimate way of allocating the State's limited resources available for AFDC assistance." Indeed, the initial opinion of the District Court concluded that the sole reason for the regulation, as revealed by the record, was "to fit the total needs of the State's dependent

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very means to subsist—food, shelter, and other necessities of life," with *Kirk* v. *Board of Regents*, — Cal. App. 2d —, —, 78 Cal. Rptr. 260, 266–267 (1969), appeal dismissed, 396 U. S. 554 (1970), upholding one-year residency requirement for tuition-free graduate education at state university, and distinguishing *Shapiro* on the ground that it "involved the immediate and pressing need for preservation of life and health of persons unable to live without public assistance, and their dependent children."

These cases and those cited n. 17, *supra*, suggest that whether or not there is a constitutional "right" to subsistence (as to which see n. 14, *supra*), deprivations of benefits necessary for subsistence will receive closer constitutional scrutiny, under both the Due Process and Equal Protection clauses, than will deprivations of less essential forms of governmental largesse.

children, as measured by the State's standards of their subsistence requirements, into an inadequate State appropriation." 297 F. Supp., at 458. The District Court quite properly rejected this asserted justification, for "[t]he saving of welfare costs cannot justify an otherwise invidious classification." *Shapiro* v. *Thompson*, *supra*, at 633. See *Goldberg* v. *Kelly*, *supra*, at —.

In post-trial proceedings in the District Court, and in briefs to this court, the State apparently abandoned reliance on the fiscal justification. In its place, there have now appeared several different rationales for the maximum grant regulation, prominent among them being those relied upon by the majority—the notions that imposition of the maximum serves as an incentive to welfare recipients to find and maintain employment and provides a semblance of equality with persons earning a minimum wage.

With regard to the latter, Maryland has urged that the maximum grant regulation serves to maintain a rough equality between wage earning families and AFDC families, thereby increasing the political support for—or perhaps reducing the opposition to—the AFDC program. It is questionable whether the Court really relies on this ground, especially when in many States the prescribed family maximum bears no such relation to the minimum wage.[19] But the Court does not indicate that a different result might obtain in other cases. Indeed, whether elimination of the maximum would produce welfare incomes out of line with other incomes in Maryland is itself open to question on this record.[20]

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[19] See Department of Health, Education, and Welfare, Report on Money Payments to Recipients of Special Types of Public Assistance, Table 4 (NCSS Report D–4, 1967).

[20] The State of Maryland has long spoken with at least two voices on the issue of the maximum grant regulation. The Department of Public Welfare has taken the position, over a number of

It is true that government in the United States, unlike certain other countries, has not chosen to make public aid available to assist families generally in raising their children. Rather, in this case Maryland, with the encouragement and assistance of the Federal Government, has elected to provide assistance at a subsistence level for those in particular need—the aged, the blind, the infirm, and the unemployed and unemployable, and their children. The only question presented here is whether, having once undertaken such a program, the State may arbitrarily select from among the concededly eligible those to whom it will provide benefits. And it is too late to argue that political expediency will sustain discrimination not otherwise supportable. Cf. *Cooper* v. *Aaron*, 358 U. S. 1 (1958).

Vital to the employment-incentive basis found by the Court to sustain the regulation is, of course, the supposition that an appreciable number of AFDC recipients are in fact employable. For it is perfectly obvious that limitations upon assistance cannot reasonably operate as a work incentive with regard to those who cannot work or who cannot be expected to work. In this connection, Maryland candidly notes that "only a very small percentage of the total universe of welfare recipients are employable." The State, however, urges us to ignore the "total universe" and to concentrate attention instead upon the heads of AFDC families. Yet the very purpose of the AFDC program since its inception has been to provide assistance for dependent *children*. The State's position is thus that the State may deprive cer-

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years, that the regulation should be abolished and has made several proposals to that effect. In so doing, the Department has taken the position that its proposals would not set welfare benefits out of line with household incomes throughout the State. See, *e. g.*, Minutes of State Board of Public Welfare Meeting, September 26, 1958, printed in the Appendix in this case, at 130–132.

tain needy children of assistance to which they would otherwise be entitled in order to provide an arguable work-incentive for their parents. But the State may not wield its economic whip in this fashion when the effect is to cause a deprivation to needy dependent children in order to correct an arguable fault of their parents. Cf. *Levy* v. *Louisiana, supra; King* v. *Smith, supra,* at 334–336 (DOUGLAS, J., concurring); *Doe* v. *Shapiro,* 302 F. Supp. 761 (D. C. D. Conn. 1969), appeal dismissed, 396 U. S. 488 (1970).

Even if the invitation of the State to focus upon the heads of AFDC families is accepted, the minimum rationality of the maximum grant regulation is hard to discern. The District Court found that of Maryland's more than 32,000 AFDC families, only about 116 could be classified as having employable members, and, of these, the number to which the maximum grant regulation was applicable is not disclosed by the record. The State objects that this figure includes only families in which the father is unemployed and fails to take account of families in which an employable mother is the head of the household. At the same time, however, the State itself has recognized that the vast proportion of these mothers are in fact unemployable because they are mentally or physically incapacitated, because they have no marketable skills, or, most prominently, because the best interests of the children dictate that the mother remain in the home.[21] Thus, it is clear, although the record

[21] Indeed, Rule 200 IX A (2)(b)(5) of the Manual of the Maryland State Department of Social Services prohibits the referral for employment of AFDC mothers who are needed in the home. And the unsuitability of many AFDC mothers has been well chronicalized in Maryland Department of Social Services, Profile of Caseloads, Research Report No. 5, at 6 (1969). See also Carter, The Employment Potential of AFDC Mothers, 6 Welfare in Review, No. 4, at 4 (1968).

does not disclose precise figures, that the total number of "employable" mothers is but a fraction of the total number of AFDC mothers. Furthermore, the record is silent as to what proportion of large families subject to the maximum have "employable" mothers. Indeed, one must assume that the presence of the mother is the home can be less easily dispensed with in the case of large families, particularly where small children are involved and alternative provisions for their care are accordingly more difficult to arrange. In short, not only has the State failed to establish that there is a substantial or even a significant proportion of AFDC heads of households as to whom the maximum grant regulation arguably serves as a viable and logical work incentive, but it is also indisputable that the regulation at best is drastically *overinclusive* since it applies with equal vigor to a very substantial number of persons who like appellees are completely disabled from working.

Finally, it should be noted that, to the extent there is a legitimate state interest in encouraging heads of AFDC households to find employment, application of the maximum grant regulation is also grossly *underinclusive* because it singles out and affects only large families. No reason is suggested why this particular group should be carved out for the purpose of having unusually harsh "work incentives" imposed upon them. Not only has the State selected for special treatment a small group from among similarly-situated families, but it has done so on a basis—family size—which bears no relation to the evil that the State claims the regulation was designed to correct. There is simply no indication whatever that heads of large families, as opposed to heads of small families, are particularly prone to refuse to seek or to maintain employment.

The State has presented other arguments to support the regulation. However, they are not dealt with

specifically by the Court, and the reason is not difficult to discern. The Court has picked the strongest available; the others suffer from similar and greater defects.[22] Moreover, it is relevant to note that both Congress and the State have adopted other measures which deal specifically with exactly those interests the State contends are advanced by the maximum grant regulation. Thus, for example, employable AFDC recipients are required to seek employment through the congressionally established Work Incentive Program which provides an elaborate system of counseling, training, and incentive payments for heads of AFDC families. See generally 42 U. S. C. §§ 630–644.[23] The existence of these alternatives does not, of course, conclusively establish the invalidity of the maximum grant regulation. It is certainly relevant, however, in appraising the overall interest of the State in the maintenance of the regulation.

In the final analysis, Maryland has set up an AFDC program structured to calculate and pay the minimum standard of need to dependent children. Having set up

[22] Thus, the State cannot single out a miniscule proportion of the total number of families in the State as in need of birth control incentives. Not only is the classification effected by the regulation totally underinclusive if this is its rationale, but it also arbitrarily punishes children for factors beyond their control, and overinclusively applies to families like appellees' that were already large before it became necessary to seek assistance. For similar reasons, the argument that the regulation serves as a disincentive to desertion does not stand scrutiny.

[23] Likewise, the State, with the encouragement of Congress, see 42 U. S. C. §§ 602 (a)(21), 610, has developed extensive statutory provisions to deal specifically with the problem of parental desertion. See generally 3 Md. Code Ann., Art. 27, §§ 88–96. And Congress has mandated, with respect to family planning, that the States provide services to AFDC recipients with the objective of "preventing or reducing the incidence of births out of wedlock and otherwise strengthening family life." 42 U. S. C. § 602 (a)(15).

that program, however, the State denies some of those needy children the minimum subsistence standard of living, and it does so on the wholly arbitrary basis that they happen to be members of large families. One need not speculate too far on the actual reason for the regulation, for in the early stages of this litigation the State virtually conceded that it set out to limit the total cost of the program along the path of least resistance. Now, however, we are told that other rationales can be manufactured to support the regulation and to sustain it against a fundamental constitutional challenge.

However, these asserted state interests, which are not insignificant in themselves, are advanced either not at all or by complete accident by the maximum grant regulation. Clearly they could be served by measures far less destructive of the individual interests at stake. Moreover, the device assertedly chosen to further them is at one and the same time both grossly underinclusive—because it does not apply at all to a much larger class in an equal position—and grossly overinclusive—because it applies so strongly against a substantial class as to which it can rationally serve no end. Were this a case of pure business regulation, these defects would place it beyond what has heretofore seemed a borderline case, see *e. g., Railway Express Agency, Inc.* v. *New York*, 336 U. S. 106 (1949), and I do not believe that the regulation can be sustained even under the Court's "reasonableness" test.

In any event, it cannot suffice merely to invoke the spectre of the past and to recite from *Lindsley* v. *Natural Carbonic Gas Co.* and *Williamson* v. *Lee Optical Co.* to decide the case. Appellees are not a gas company or an optical dispenser; they are needy dependent children and families who are discriminated against by the State. The basis of that discrimination—the classification of individuals into large and small families—is too

arbitrary and too unconnected to the asserted rationale, the impact on those discriminated against—the denial of even a subsistence existence—too great, and the supposed interests served too contrived and attenuated to meet the requirements of the Constitution. In my view Maryland's maximum grant regulation is invalid under the Equal Protection Clause of the Fourteenth Amendment.

I would affirm the judgment of the District Court.